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NEW YORK'S CONSTITUTIONAL CONVENTION.[1]

ARTICLE XIII of the constitution of the state of New York, adopted in 1846, provides that in the year 1866 and every twentieth year thereafter the question shall be submitted to the people: "Shall there be a convention to revise the constitution and amend the same?" In 1866 that question was so submitted, and a convention to revise and amend the constitution was duly held in 1867. In 1886 that question was again submitted to the people, and the vote in favor of such a convention was the most emphatic ever given in the state upon any question as to the revision or amendment of the constitution. Notwithstanding this emphatic vote, the constitutional convention thus ordered has not been held. The fact marks a failure of constitutional government which deserves the thoughtful consideration of the people of the state. In 1832, when South Carolina undertook to nullify a law of the United States, President Jackson issued a proclamation intimating plainly that if such a course were persisted in he would use the whole military power of the nation to enforce submission. In 1861, when a number of the states of the Union attempted to violate and destroy the constitution of the United States, the question was fought out upon the field of battle through one of the bloodiest wars in history until the constitution of the United States was recognized to be supreme. By a simple failure on the part of the governor and the legislature to agree upon details, the constitution of the state of New York, as touching the guaranty which it affords for a periodic constitutional convention, is set aside, and the popular demand of nearly 600,000 voters that such

[1] An address delivered before the Commonwealth Club, New York City, March 18, 1889.

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a convention should now be held is made of no effect. Can the people of the state of New York afford to consider this situation as a matter of indifference, because it is their own officials who thus jauntily thwart the constitution and refuse to give heed to the popular will?

This is the question in the abstract. Let us consider it for a moment in its details. At the general election of 1886, the people decided by a vote of 575,000 against 31,000 that a constitutional convention should be called. In accordance with the provision of the constitution itself, the two houses of the legislature (the Republican party having a majority in both) united, in 1887, in the passage of a bill to provide for the holding of the convention which had been ordered. This bill the governor vetoed on questions of detail. There the matter has rested until this day. The question, therefore, would appear to be whether, upon questions of detail as to the law under which the convention is to be held, the constitutional guaranty that such a convention shall be held in response to a vote of the people may be set aside. It is true that the same constitution gives to the governor the veto power, and it is through the exercise of this constitutional power residing in the governor that the significant result alluded to has been reached. In my opinion, the result indicates that the use of the veto to prevent the carrying out of the constitutional mandate is a clear abuse of the veto power. That power is a negative power. It gives to the governor the right to say, as to any bill which has passed the legislature: I forbid. Is it not an absurdity to claim that, under such a negative power, the constitution intended to give to one man the opportunity to suspend the operation of the constitution, in its guaranty to the people of the right of a periodic revision of the constitution itself? When the nation found itself involved in the war for the preservation of the Union, some people claimed that unless the Union could be preserved within the methods of ordinary constitutional action it must be allowed to perish. President Lincoln took the much more philosophical view, that it was absurd to suppose that the people of the United States had created a nation which did not have the right to

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preserve its own life. Therefore he claimed, and acted upon the claim, that as commander-in-chief of the forces of the United States engaged in a war for the preservation of the Union, he was entitled to exercise, as a war power, whatever power was necessary to preserve the nation's life. The governor's veto of the bill to provide for the holding of the constitutional convention which had been ordered, and his vetoes of the bills in regard to the taking of the census which should have been taken in 1885, proceed upon precisely the opposite theory. According to his action, it is legitimate for one man to hold in suspense, as long as his power lasts, the operation of the constitution in some of its most important provisions.

If this be a proper use of the veto power, the consequences are more far-reaching than the cases to which they immediately apply, important as these are. It is substantially the assertion of a claim on the part of the governor positively to shape legislation. Hitherto, it has been considered that the positive shaping of legislation is a function which pertains to the legislature as such, the relation of the governor thereto being simply to approve or to forbid. When, however, the governor stretches the veto power to the point where he forbids legislation approved of by the legislature for the purpose of carrying out the expressed mandate of the constitution, he practically claims that no legislation of any sort shall be permitted which in its details is not satisfactory to him. In other words, unless the majority in a legislature is sufficient to override a governor's veto, the governor may dictate the form of all legislation which is to become law. I do not believe, for one moment, that such a use of the veto power was contemplated when it was lodged with the governor. It is significant that the governor, when it has suited his convenience to do so, has been very ready to adopt the opposite theory. A few years ago, a bill permitting pools to be sold on race courses passed both houses of the legislature and came to him for action. It was vigorously opposed by many clergymen of the state and by all the element which naturally would sympathize with them, while it was supported, on the other hand, by those who believed it desirable to have such matters regulated

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by law. The governor, in permitting the bill to become a law without his signature, filed a memorandum, in which he said that it was the duty of the legislature to decide as to the propriety of such questions, and that he saw no occasion to interpose his veto at that point.

It is true that since the governor vetoed the bill providing for the constitutional convention, he has been re-elected, and the claim may be made that the people have condoned his mistake, if they have not even practically endorsed his position. This claim would be stronger if it were not at the same time true, that the people of the state have since elected a Republican legislature, thus endorsing substantially the attitude taken by that party also. In 1887, immediately after the controversy, a new legislature was chosen which was strongly Republican, the Senate being more strongly so than it had been for many years. Again, in 1888, an Assembly was elected with a larger Republican majority than for a long period. The truth probably is that both governor and legislature were chosen without special consideration of their attitude upon this question. Otherwise we reach the conclusion that the people of the state have done that peculiarly amiable thing — endorsed two entirely antagonistic positions.

While it has been necessary thus to discuss the steps by which the present situation has been reached, it is the present rather than the past that is now of interest. The fact remains that the constitutional convention which was ordered has not yet been held. How then are we to get it? Clearly the duty of further initiative rests with the legislature. It must continue to send up measures providing for such a convention, until some one of those measures becomes law, or until the people appreciate the issue and pass upon it in the election of their governor. It cannot be doubted that, once clearly understood, the position of the legislature will be sustained.

The purpose of this paper is not to show why a constitutional convention ought to be held. The people, acting in a constitutional way, have ordered that it should be held, so that any further reasons for holding the convention would be superfluous.

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We have a right to demand of our own authorities that they grant to us the revision of the constitution which the constitution itself guarantees to us. But while it is superfluous to give further reasons for the holding of such a convention than that it is our right to have it, it is not superfluous to point out the disadvantages from which we are suffering by reason of its not being held. Some of these will appear by considering the steps which have led to the insertion into the constitution of the section which provides for a periodic revision. The first constitution of the state, adopted in 1777, contained no provision either for amendment or revision. The constitution of 1821 contained a provision for amendment, but none for revision. The constitution of 1846 (under which, in this particular, we are still living) made provision not only for occasional amendment, but for periodic revision. In other words, starting with a constitution which was assumed to need no amendment, experience has gradually brought the state to appreciate the necessity not only for amendment, but for revision. It is significant that the convention of 1867 maintained the existing provisions of the constitution in this respect, simply relieving them of ambiguity. It has sometimes been questioned whether, under the constitution of 1846, a new convention can be ordered except by a majority vote of all the people voting at that election; and the convention of 1867 proposed to set all doubt upon that point at rest by providing, in explicit terms, that a convention could be called by a majority of all the votes cast with reference to that question. It is true that the constitution submitted to the people by the convention of 1867 was not adopted; but it is significant that the discussions of that convention showed its judgment in this respect to be the same as that of the convention of 1846. The provision for a periodic revision was not inserted in the constitution of 1846 without debate. It was defended on the expressed ground that it asserted the great fundamental principle that all power resided in the people, a principle less likely to be forgotten if, once in twenty years, they might take the power into their own hands and bring the constitution into review without the intervention of any other

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body. It was reserved for the present governor to demonstrate, in the year 1887, that all power by no means resides in the people. After full debate, the convention of 1846 determined to provide for periodic revision, by a vote of 89 to 5. Even this does not exhaust its record. An effort was made to have the question reconsidered, but it did not command sufficient strength to secure the calling of the ayes and noes. In the convention of 1867, while there was a division of opinion upon the question whether such a convention should be ordered by a majority of the voters voting at that time, or by a majority of those voting upon that particular question, the committee were able to unite in this statement:

> Your committee are well satisfied that the provisions in the constitution of 1846, both for amendment and revision, are wise and salutary, and ought to be substantially retained.

The chairman of the committee having this matter in charge in the convention of 1867 declared that, with the single exception of the vote in favor of the constitutional convention of 1846, there never had been a proposition submitted to the people of the state, either to amend or to revise the constitution, to call a constitutional convention, or to adopt a constitution, which had commanded a majority of the votes cast at that election for the principal officer then running. In 1826, the vote upon the amendment to remove the property qualification for voting commanded a total vote of 130,000 out of a body of legal voters numbering 308,000. One would have supposed that a question like this would have brought almost every voter to the polls. It is immensely significant, therefore, that in 1886 the vote in favor of a constitutional convention should have amounted to 575,000 out of a total vote for governor of 971,000. It is safe to say, therefore, that the demand for a revision of the present constitution was more emphatic, at that time, than any similar expression on the part of the voters, at any time in the history of the commonwealth. It may, therefore, be contended that one of the chief evils resulting from the existing state of things is that the people are compelled to live along under

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the provisions of a constitution which they have emphatically declared to be inadequate.

It is, of course, impossible for any one to say with assurance precisely what impulses moved the people to demand in so marked a way a revision of the constitution, but it is easy to indicate some of the points in which the constitution of 1846 is clearly inadequate for the needs of the present time. Take the question of rapid transit in cities. As we know it to-day, this question dates back to about 1877, so that nothing in the constitution has any direct bearing upon it. The rights of railroad companies in relation to it may be well enough defined by law, but it is at least an open question whether the interests of the municipalities, as such, are or can be sufficiently protected. The whole matter of city government is one that demands careful consideration. Since the constitution of 1846 was adopted, the cities of the state have grown enormously both in number and in size. The intervening years have been fruitful of costly experience, from which much has been learned with reference to the government of cities. Especially is it seen that the habit of interference on the part of the legislature with the detail of city action is full of embarrassment, [illegible]aking generally, is as bad in its effect upon the legislature as upon the cities. The demand for home rule in cities, at the present time, is by no means a demand for home rule as it was understood in 1846. In that day, cities usually were administered by a common council with very large and complete powers, and a mayor who was merely a figurehead. Experience in the interval has brought our largest cities, as it is bringing the large cities all over the land, completely to reverse this position; so that good city government is now sought through a strong executive and a common council with very limited powers, instead of through a weak executive and a common council with very ample powers. Neither would it be contended by any one that all power with reference to cities should be taken away from the legislature; but there are few, if any, who are familiar with the subject, who do not believe that the constitution might very advantageously limit the right of interference as to details which

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now resides in the legislature. Again, it is probable that a still further advance could be made in the direction of covering by general laws many departments of legislation which are still open to special acts of the legislature. Professor Bryce has pointed out how useful a distinction in the method of procedure might be made in the legislature, with reference to public legislation and private legislation. The impulse in favor of a constitutional revision at the present time came very largely from Mr. Henry George and his followers, who were interested in the subject from the standpoint of taxation. There is no doubt that the whole question of taxation would open up as wide a field of discussion as any question with which such a convention would be called upon to deal. Whether Mr. George and his followers are right or wrong, the people of the state have demanded the constitutional convention, and orderly government now requires that the subject should be debated in the halls of such a convention and not be indefinitely shelved. Similarly as to railroads. It is not impossible that the experience of forty years has made clear some points which might profitably be regulated in the constitution. It is conceivable that in the atmosphere of a constitutional convention, where great principles necessarily command attention and provoke discussion, wiser conclusions might be reached on many of these questions than are possible in the hurried and heated discussions of a legislature.

A periodic revision of the constitution also affords the opportunity to take advantage of the experiments of other states in constitution making. New York is only one of forty-two sister commonwealths, in many of which most interesting experiments are being carried on, in their fundamental law as well as in ordinary legislation. The states do learn more or less from each other in matters of ordinary legislation. A revision of the constitution, as opposed to its current amendment, gives the opportunity for a comprehensive survey of the progress of popular feeling and experience all over the Union. Even if the conclusions of the convention are largely set aside by the people, as they were in 1867, the discussions are not for that reason

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valueless. One part of the work of the convention of 1867, that relating to the judiciary, was adopted, with important advantages to the commonwealth; and a number of the most salutary amendments which have since been made a part of our fundamental law are the direct outgrowth of suggestions made by that convention.

Of all these advantages, and of many others, we are deprived through the failure of the proper authorities to provide for the convention which the people, in an orderly and constitutional manner, have determined ought to be held. Meanwhile, the situation amounts practically to a violation of the constitution and an annulment of the popular will. When such things happen, they give a blow to the popular respect for government and for law. In the state of New York it is especially important for the citizens to reflect upon this aspect of the matter, because, in consequence of a similar controversy between the governor and the legislature, the enumeration of the people of the state, which ought to have been made in 1885, has not been made. The consequences of this failure are lamentable. Not only is the redistricting of the state into assembly districts on the basis of the new enumeration delayed year after year, but the census, when it comes to be taken, will not be, as it hitherto has been, the record of the tenth year from the preceding census. Thus the regularity is broken into, and all the sociological data which are furnished by the taking of a census at regular intervals are seriously confused. It is doubtful, from this standpoint, whether it is now possible to make a census before 1895 which will not be a source of as great perplexity as service to students of social science.

But apart from all questions of consequences, the important fact remains that through a disagreement of the governor and the legislature in our own state the constitution is set aside, and a failure of orderly government has taken place to which the national government, for example, presents no parallel. It concerns the good name of the state that such things should not be. It is matter of comparatively little concern, from this point of view, whose is the fault as to the past. The duty of

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the present is to carry through legislation which shall provide for the constitutional convention, which is our right. The first step in that process is to secure action by the legislature. The second step is to secure the co-operation of the governor. It is to be hoped that the legislature will do its part whether the governor does his or not. In time, if the legislature continues to do its duty, the issue will be made clear — whether the veto power can be properly used to nullify the constitution itself. Meanwhile it is to be hoped, of course, that the legislature will go as far as it can in meeting the objections which have led the governor to adopt the line of action he has hitherto pursued. Whatever may be the theoretical merits of the case, the legislature cannot escape criticism in the forum of common sense if it now fails to try to reach an agreement which shall be satisfactory to both sides in the controversy.

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THE ECONOMIC BASIS OF SOCIALISM.

MARX'S THEORY OF SURPLUS VALUE.

SOCIALISM affirms two general propositions; one is purely economic and the other philosophic; both are claimed to be deduced from the history and nature of economic phenomena. These propositions may be stated as follows:

First. That the injustice of deducting rent, interest and profits from the laborer's rightful income is an inevitable part of the economic process of capitalistic production; and hence that all economic and political reform should be directed to the elimination of these phases of exploitation.

Second. That the law of historic evolution and the specialization of productive methods naturally tend towards an industrial as well as a political democracy, in which public or collective administration will necessarily supersede private ownership and private control in economic production.

If these two postulates are correct, modern statesmanship should be readjusted to a socialistic basis as rapidly as possible. If all rent, interest and profit are exploitation and cannot be secured without injustice, they cannot be defended and should be abolished. If the evolution of society is necessarily towards economic collectivism, to prevent the movement towards socialism is to arrest progress. Before we can safely accept these conclusions, however, we must be sure that the postulates are correct.

Since the limits of this paper will not permit the full treatment of both these propositions, I shall confine myself to the first — the economic basis of the socialistic theory.

If we were discussing the history of modern socialism, we should have to go back at least to the days of Owen; were we considering the authorship of the tenets of socialism, we should have to turn largely to the writings of Rodbertus; but to study the most complete presentation of the economic basis of social-

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ism we must take the writings of Karl Marx. Although Marx builds chiefly upon the foundation laid by Rodbertus, he is the only socialist who has presented a consistent body of economic doctrine. His work, *Capital*, has superseded all others as the socialistic text-book; it is really the economic bible of the disciples of modern socialism the world over, having been translated into several languages.[1] In this work of 800 pages Marx analyzes the whole process of economic production under the capitalistic or wage-system and endeavors to explain the origin and development of the exploitation of labor upon a purely scientific basis. The great evil which he finds in the present industrial system is the creation of what he calls "surplus value." He endeavors to prove that, through the peculiar economic nature of capitalistic production, the laborer can be and is made to produce more value than he receives; and it is this excess of value produced over value received which he calls "surplus value." According to him, "unpaid wages" constitute the source of all rent, interest and profit — in fact of all surplus. This is the cardinal point of the whole doctrine of socialism. If this proposition can be scientifically established, the theory of socialism cannot be successfully disputed. If however this proposition cannot be sustained, then the whole economic fabric of socialism falls.

Notwithstanding the extensive circulation of Marx's writings and their translation into English as well as other languages, his economic doctrines and especially his theory of surplus value are very little understood among English readers. Before attempting any criticism of his theories we shall therefore briefly state his position as presented in his great work, *Capital*.

Statement of Marx's Economic Doctrines.

The theory of value with which Marx's book opens is substantially that of Ricardo; namely, that commodities exchange

[1] Marx's Capital was first published in German in 1867; it was translated into Russian in 1872, into French in 1873 and into English in 1886, and it is now published in America by D. Appleton & Co., New York.

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on the basis of the quantity of labor consumed in their production.[1] He endeavors to show that while surplus value comes to the surface in the sphere of circulation (buying and selling) it cannot originate there; for, as there is nothing in the process of exchange which produces value, that process cannot create surplus value.[2] The buying and selling of "labor power" is next considered.[3] Marx treats labor as a commodity whose price is determined, like that of everything else, by the quantity of labor consumed in its production.[4] He then assumes that the cost of maintaining the laborer and his family twenty-four hours and the production of three shillings in gold both consume the same amount of labor power; hence three shillings represent the full economic value of a day's labor. Thus, according to his own theory, the capitalist in buying labor (as in buying all other commodities) pays for it the full economic value.[5] Consequently there is as yet no surplus value created, because economic equivalents are thus far given and received.

Since labor power is the only factor capable of creating surplus value, and can create it only when used as a productive force, we can ascertain how surplus value arises and how the laborer is exploited only by following him into the sphere of production. Thither Marx now conducts us, with the assurance that "*here we shall see not only how capital produces but how capital is produced. . . . We shall at last force the secret of profit-making.*" [6]

[1] "Commodities therefore, in which equal quantities of labor are embodied or which can be produced in the same time, have the same value. . . . As values, all commodities are only definite masses of congealed labor-time." Capital, p. 6.

[2] "Turn and twist them as you may, the facts remain unaltered. If equivalents are exchanged, no surplus value results, and if non-equivalents are exchanged, still no surplus value. Circulation of the exchange of commodities begets no value." *Ibid.* p. 141.

[3] Chapter iv, part i, is entirely devoted to this subject.

[4] "So far as it [labor power] has value, it represents no more than a definite quantity of the average labor of society incorporated in it. . . . Given the individual, the production of labor power consists in his reproduction of himself or his maintenance." Capital, p. 149.

[5] *Ibid.* p. 151.

[6] *Ibid.* p. 155. The italics are mine.

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How Surplus Value is Created.

Marx undertakes to show, for the first time, just where and how, through the process of economic law, the laborer is exploited or robbed of half he produces. He explains that under capitalistic production — which he correctly dates from the sixteenth century — the capitalist buys all the factors in production and sells the product. Since he has purchased the labor power, tools and raw material, in accordance with the law of value already explained the results are legitimately his. For the same reason that the value of labor power, tools and raw material is determined by the amount of necessary labor expended in their production, the value of the commodities they jointly produce, Marx reminds us, must be fixed by the same law.[1]

He assumes[2] for the purpose of his illustration that the raw cotton necessary to make ten pounds of yarn costs ten shillings, and that "the wear and tear of the spindle, which for our present purpose may represent all other instruments of labor employed, amounts to the value of two shillings." Thus twelve shillings of the value represented in the ten pounds of yarn is directly due to the cost of the cotton and of the machinery used in making the yarn. The only factor that now remains to be added is the labor of spinning, without which the raw cotton would not be turned into yarn. This process he states as follows:

> We assumed on the occasion of its sale that the value of a day's labor power is three shillings, and that six hours' labor are incorporated in that sum. . . . The same quantity of labor is also embodied in a piece of gold of the value of three shillings. Consequently, by the mere labor of spinning, a value of three shillings is added to the cotton. Let us now consider the total value of the product, the ten pounds of yarn. Two and a half days' labor have been embodied in it; of which two days were contained in the cotton and in the substance of the spindle worn away, and half a day was absorbed during the process of spinning. This two and a half days' labor is also represented by a piece of gold of the value of fifteen shillings. Hence, fifteen shillings is an adequate price for the ten pounds of yarn, or the price of one pound is eighteen pence.

[1] Capital, p. 167. [2] *Ibid.*

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Our capitalist stares in astonishment. The value of the product is exactly equal to the value of the capital advanced. The value so advanced has not expanded, no surplus value has been created, and consequently money has not been converted into capital.[1]

The capitalist is then described as being in anything but a tranquil state of mind at the result; and, after he has been made to offer some weak but truly orthodox reasons why he should have had a profit, he is represented as leaving "all such like subterfuges and juggling tricks to the professors of political economy who are paid for it," and as turning his attention to concocting a new scheme for the creation of surplus value — in which he succeeds. In analyzing the factors in production, the capitalist discovers that no surplus can be squeezed out of the raw material or the spindle. The only factor that can be exploited is therefore labor power. In examining this, he finds that three shillings maintains the laborer during twenty-four hours, of which time he works only six hours. If the laborer should be made to work twelve hours, which he can do without extra cost, the capitalist could have the product of the additional six hours as surplus. The capitalist (whom Marx represents as knowing his business better than the economist) then resumes business on this twelve-hour plan with complete success. The process is stated thus:

The laborer therefore finds in the workshop the means of production necessary for working not only during six but during twelve hours. Just as during the six hours' process our ten pounds of cotton absorbed six hours' labor, and became ten pounds of yarn, so now twenty pounds of cotton will absorb twelve hours' labor and be changed into twenty pounds of yarn. Let us examine the product of this prolonged process. There is now materialized in this twenty pounds of yarn the labor of five days, of which four days are due to the cotton and the lost steel of the spindle, the remaining day having been absorbed by the cotton during the spinning process. Expressed in gold, the labor of five days is thirty shillings. This is therefore the price of the twenty pounds of yarn, giving as before eighteen pence as the price of a pound. But the sum of the values of the commodities that entered into the process amounts to twenty-seven shillings. The value of the yarn is thirty shillings.

[1] Capital, p. 171.

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Therefore the value of the product is one-ninth greater than the value advanced for its production; twenty-seven shillings have been transformed into thirty shillings; a surplus value of three shillings has been created. The trick has at last succeeded; money has been converted into capital.[1]

Marx thus claims that in the spinning process six shillings of value have been added to the twenty pounds of yarn by the use of labor power for which the laborer has received only three shillings. Thus the surplus value created by the spinner is exactly equal to his wages. Throughout the whole discussion in the remaining 625 pages Marx never tires of reminding the reader of this fact.

Marx's position has been stated and his process of creating surplus value presented — mainly in his own words. Let us now examine the economic workings of this process, and see whether "the trick" was really performed by the capitalist in the economic process of producing the material basis of civilization — or by Marx himself in the metaphysical process of producing an immaterial basis for socialism.

Examination of the Process of Producing Surplus Value.

It will be remembered that, in demonstrating the operation of the law of economic value,[2] Marx first manufactures ten pounds of cotton yarn, in which the cost of the different factors consumed is stated as follows:

Cost of raw cotton	10*s.*
Cost of wear and tear of machinery	2*s.*
Cost of labor power	3*s.*
Total cost	15*s.*

Marx then tells us that the same amount of labor power is expended in the production of fifteen shillings in gold, so that the ten pounds of yarn and the fifteen shillings are the exact economic equivalents of each other. To use his own formula, the case stands thus: 15*s.* value of yarn = 10*s.* raw cotton + 2*s.* machinery + 3*s.* labor power; and fifteen shillings is all the

[1] Capital, p. 175. [2] *Ibid.* p. 171.

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capitalist can get for his yarn, and no surplus value is produced. Marx then produces for us twenty pounds of yarn, in the process of producing which a surplus value of three shillings is created. He sees, of course, that in producing twenty pounds of yarn the raw material consumed and the wear and tear will be twice as great as in the production of ten pounds; but he discovers that the laborer lives twenty-four hours on three shillings and, in the first process, works only six hours a day to earn the three shillings. He now makes him work twelve hours a day and produce twenty instead of ten pounds of yarn. And since the laborer can live now, as before, on three shillings a day, he only pays him three shillings for twelve hours' labor. Accordingly the results of the second process are as follows:

Cost of raw cotton	20*s.*
Cost of wear and tear of machinery	4*s.*
Cost of labor power	3*s.*
Total cost	27*s.*

Marx assumes that, since the value of ten pounds of yarn is fifteen shillings, that of twenty pounds must be thirty shillings; hence three shillings surplus value has been created. To use his formula, the "prolonged process" stands thus: 30*s.* value of yarn = 20*s.* raw cotton + 4*s.* machinery + 3*s.* labor power + 3*s.* surplus value. Then as with a flourish of trumpets he exclaims: "The trick has at last succeeded; money has been converted into capital." And, as if to assure us that everything has been done on the square, he adds:

> Every condition of the problem is satisfied, while the laws that regulate the exchange of commodities have been in no way violated. . . . Yet for all that he [the capitalist] draws three shillings more from circulation than he originally threw into it.[1]

If we ask whence came this three shillings' surplus value, he promptly replies: From prolonging the working day to twelve hours and thereby making the laborer produce twenty instead of ten pounds of yarn for the same pay. Now "the trick"

[1] Capital, p. 176.

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has surely succeeded, and it almost seems as if the capitalist had performed it; but let us look at it once more.

In the first instance the case stood: 15*s.* value of yarn = 10*s.* raw cotton + 2*s.* machinery + 3*s.* labor power. Why was the value of the yarn just fifteen shillings? Because, explains Marx at great length: "Fifteen shillings were spent in the open market upon the constituent elements of the product, or (what amounts to the same thing) upon the factors of the labor process."[1] He explicitly tells us that the only reason why the capitalist could not get sixteen or seventeen shillings for his yarn was that only fifteen shillings had been consumed in its production.

Now let us look at the twenty pounds of yarn produced under the "prolonged process" in the light of the law Marx has applied to the production of the ten pounds. Here the cost of the raw material is twenty shillings; wear and tear, four shillings; labor power, three shillings; total cost, twenty-seven shillings. Therefore, according to the above law, the total value of the product is twenty-seven shillings. "Oh no!" exclaims Marx; that would give no surplus value. The *cost* of the yarn in this case, he admits, is only twenty-seven shillings, but he insists that its *value* is thirty shillings.[2] According to Marx, then, his economic law of value works thus: 10*s.* + 2*s.* + 3*s.* cost = 15*s.* value; while 20*s.* + 4*s.* + 3*s.* cost = 30*s.* value. In other words, 15*s.* = 15*s.*, but 27*s.* = 30*s.* Now by what application of his own law of value, according to which fifteen shillings' cost can only produce fifteen shillings' value, can he make twenty-seven shillings' cost produce thirty shillings' value? Clearly, if the twenty pounds of yarn, the production of which only cost twenty-seven shillings, can have a value of thirty shillings, then by the same law the ten pounds of yarn, whose production cost fifteen shillings, can have a value of sixteen shillings and six pence. To assume that, while a cost of fifteen

[1] Capital, p. 171.

[2] "The sum of the values of the commodities that entered into the process amounts to twenty-seven shillings. The value of the yarn is thirty shillings. . . . A surplus value of three shillings has been created." *Ibid.* pp. 175, 176.

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shillings cannot yield a value of more than fifteen shillings, a cost of twenty-seven shillings can yield a value of thirty shillings, is to violate alike the laws of logic and the rules of arithmetic; and this self-contradiction destroys the whole basis of his theory. Manifestly, surplus value was no more created in the production of the twenty pounds of yarn than in that of the ten pounds. The three shillings here paraded as surplus value is a pure invention of Marx. True, "the trick has at last succeeded"; but it was performed by Marx and not by the capitalist. It is obviously a trick of metaphysics and not of economics. The only exploitation here revealed is the exploitation of socialistic credulity and not of economic labor power.

It may be true that, after years of eager and persistent pursuit of the capitalistic robber, Marx actually deluded himself into the belief that he had here found him. But whatever may have been Marx's mental condition, the fact remains that a purer specimen of intellectual trickery, a more clean-cut piece of metaphysical sleight-of-hand than is here exhibited, is not to be found in the literature of economics. The neatness of the "trick" is proven by the fact that this worthless counterfeit of an argument has passed for more than twenty years for sterling coin. Instead of every condition of the problem being satisfied, as he boastfully claims, they have all been boldly violated. A theory according to which 15*s.* value = 15*s.* cost, while 30*s.* value = 27*s.* cost, needs only to be stripped of its metaphysical garment and once seen in its simplicity in order to be rejected as unworthy a place in the literature of any science.

The fallacy here so boldly flaunted — and made to do service as the scientific basis for a radical reconstruction of society — can be exposed in many ways. It is true that, in Marx's second case, the laborer is made to produce twenty pounds of yarn for the same wages which he previously received for producing ten pounds. But instead of creating a surplus value of three shillings for the capitalist, this change of cost, according to Marx's own law of value, should have reduced the price of the product three shillings to the consumer. It is a well established law in economics that the value of commodities tends to diminish as

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the amount of the product per unit of labor cost increases. That Marx recognizes this principle, when discussing other phases of the subject, is clear from the following statement:

> Let us assume that some invention enables the spinner to spin as much cotton in six hours as he was able to spin before in thirty-six hours. His labor is now six times as effective as it was for the purposes of useful production. The product of six hours' labor has increased six-fold, from six pounds to thirty-six pounds. But now the thirty-six pounds of cotton absorbs only the same amount of labor as formerly did the six pounds. One-sixth as much new labor is absorbed by each pound of cotton, and consequently the value added by the labor to each pound is only one-sixth of what it formerly was.[1]

But in the hypothetical case which we have been examining the situation is exactly similar. The laborer who, in Marx's second case, produces twice as much yarn for three shillings as he produced in the first case, now adds only half as much value to each pound of yarn he produces. Hence, for the same reason that he added three shillings to the value of the ten pounds of yarn, he only adds three shillings to the value of the twenty pounds; and consequently its value can only be twenty-seven shillings, and no surplus value is created.

Suppose (instead of doubling the length of the laborer's working day) that the price of raw cotton should fall fifteen per cent. The cost of the different factors in the production of twenty pounds of yarn would then be as follows:

Raw material	17*s.*
Cost of wear and tear of machinery	4*s.*
Two days' labor, six hours each	6*s.*
Total	27*s.*

The laborer in this instance receives twice as much as when working for Marx, but the result is exactly as before, the only difference being that the three shillings is saved on the cost of raw material instead of the cost of labor power. Would Marx claim that the value of the yarn is now thirty shillings? Certainly not; on the contrary, he would insist that it could not

[1] Capital, p. 183; see also pp. 151, 171, 172, 175, 176, 194, 195, 196.

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possibly be more than twenty-seven shillings, since (as he repeatedly declares) auxiliary capital and raw material can only add to the value of the product the value which they lose in the process — *i.e.* the cost of replacing them [1] — and every fall in the cost of raw material shows itself in the fall of the value of the product. Indeed, were this otherwise, cheap raw material and improved machinery would have no influence in reducing the price of commodities. If then the twenty-seven shillings' cost, in this instance, could only yield twenty-seven shillings' value, by what rule of logic or experience can it be assumed that, by transferring three shillings of the cost from the raw material to the labor power, the twenty-seven shillings' cost would yield thirty shillings' value? As a matter of economic law it can make absolutely no difference to the value of the product whether the twenty-seven shillings' cost is made up of three shillings' labor, four shillings' machinery and twenty shillings' raw material, or of twenty shillings' labor, four shillings' machinery and three shillings' raw material. If the labor power cost nothing and machinery and raw material cost twenty-seven shillings, or the raw material and machinery cost nothing and the labor cost the whole twenty-seven, the economic result would remain identical. Whether the twenty-seven shillings of cost is all in one item or is spread over a hundred items, makes no economic difference; it has the same aggregate effect on the value; if it will yield a value of thirty shillings when it is all spent in labor power, it will do the same when it is all spent in raw material and machinery and nothing is paid for labor power.

If we investigate the cause of any fall in the cost of raw material or of machinery, we shall find that it is due to the diminution in the cost of labor power devoted to its production. Suppose, for instance, that the price of raw cotton has fallen owing to an increased crop; the diminished value of the crop,

[1] "The value of a commodity therefore varies directly as the quantity and inversely as the productiveness of the labor incorporated in it." [Capital, p. 7. "It [machinery] never adds more value than it loses on an average by wear and tear." *Ibid.* p. 383. "The less labor it [machinery] contains, the less value it imparts to the product. The less value it gives up, so much the more productive it is, and so much the more its services approximate to those of natural forces." *Ibid.* p. 386.

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as Marx admits,[1] is really due to the fact that with a given amount of labor the product has been increased; hence the cost of labor power per unit of product is reduced. So too with machinery; if the cost is lessened, it is because either cheaper labor or labor-saving machinery has been employed in its production.[2] Thus we see that it makes no real difference whether the three shillings' reduction in the cost of producing twenty pounds of yarn shows itself in the raw material, in the wear and tear of machinery or in the wages of the spinner; in any case it is ultimately due to a diminution in the cost of labor power.

Therefore, from whatever aspect we view the subject, Marx's attempt to show that fifteen shillings' cost can yield only fifteen shillings' value, but that, by a mere change in the distribution of the items of expenditure, a cost of twenty-seven shillings will yield a value of thirty shillings, is a complete failure; and consequently his theory of surplus value and "the exploitation of the laborer" breaks down entirely. With the failure of this doctrine, the economic basis and scientific character of socialism vanishes; and as a system for the industrial reconstruction of society it is reduced to the level of a merely sentimental movement.

The Cause of Marx's Theory.

The fatal error into which Marx has fallen is primarily due to his unqualified acceptance of the doctrines of Ricardian economics. The postulate to which Marx clung most tenaciously is that suggested in Adam Smith's assertion, that "labor is the real measure of the exchangeable value of all commodities"; which Ricardo elaborated into the theory that the "value of commodities is determined by the *quantity* of labor necessary to their production." Naturally this had a great attraction for Marx, because it seemed to him to make the laborer the source and therefore the rightful owner of all wealth.

[1] "For example, the same amount of labor in favorable seasons is embodied in eight bushels of corn and in unfavorable only in four." Capital, p. 7.

[2] "The production of machinery by machinery lessens its value relatively to its extension and efficiency." *Ibid.* p. 386.

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If Marx had been more of an economist and less of a revolutionist, he might have seen that this was one of the many instances where Ricardo came very near the truth but just missed it. The error of the above postulate consists in making the value of the product depend upon the *quantity* instead of the *cost* of the labor power expended in its production. Ricardo erroneously assumes that the quantity of labor and the cost of labor are equivalent expressions.[1] This, however, is only true so long as the cost of labor per unit of time remains the same. Since labor power, like every other factor in production, can only affect the value of the product as an item of cost, it is very clear, no matter how much the quantity of labor may vary, that the value of the product will vary only with the variation in the aggregate cost of that labor. Therefore, in the last analysis, it is not the quantity but the cost of that quantity which affects the value. Indeed, if the laborer should work for nothing he would then, as Marx says of machinery, "approximate natural forces," and his labor, like sunlight, air and gravitation, would add nothing to the value because it cost nothing. And if the cost of labor per unit was doubled, the value of the product would increase in the same proportion without any increase in the quantity of labor expended in its production.

In considering the relation of the cost of labor to the value of the product, it should always be remembered that it is the total cost of the aggregate labor consumed in a given unit of product which affects its value, and not necessarily the cost per unit of labor. If the cost of labor per unit of time is diminished, the quantity of labor consumed in a unit of product may be increased without increasing its value. And, conversely, if the cost of a unit of labor is increased, the quantity of labor consumed in a unit of product may be diminished without reducing its value. This explains why the product of ten hours' labor of a coolie, who works for six cents a day in the rice fields of Asia, has a much less value than the product of ten hours' labor of a jeweller who receives seven dollars a day in New York city.

[1] Political Economy and Taxation, pp. 10–14.

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And yet, with the aid of modern machinery, the high-priced American can produce commodities at a less price per unit than can the low-paid Asiatic. It is upon this principle that high-priced labor as a productive force is generally cheaper than low-priced labor. Although the labor power of the former costs more per unit of time, the total product is so much larger that the cost of his labor per unit of product is less than that of the low-paid laborer who works without machinery.

Thus it is that the value of a commodity varies with a variation in the quantity of labor devoted to its production only when the cost of the labor power per unit of time remains the same. If, instead of unqualifiedly accepting Ricardo's crude formula, Marx had recognized this fact, he would have seen that when the laborer's working day was doubled without any change in his daily wages, although the quantity of labor expended was double, the total cost of labor power was the same; hence, as double the amount was produced, the cost of labor power per unit of product was reduced one-half. It would then have been clear to him that the value of the twenty pounds of yarn could have been increased only three shillings by the twelve hours' labor, because three shillings was all the twelve hours' labor cost. The product of the three shillings' worth of labor being twenty instead of ten pounds of yarn, the labor cost of each pound was of course fifty per cent less. If the same labor had cost twenty-seven shillings instead of three shillings, it would have added a value of twenty-seven shillings to the yarn instead of three shillings; and if the same labor had only cost one shilling instead of three, then the value of the product could have increased only one shilling instead of three shillings.

But (says the socialist, still in quest of the source of profits) granting that Marx did not find the three shillings surplus value; granting that the value of the twenty pounds of yarn was only twenty-seven shillings, and not thirty as he claimed; and admitting also that this mistake was due to his acceptance of the Ricardian error of regarding the quantity instead of the cost of labor as the value-determining factor in production, —

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where do profits come from? If the law of economic value demands the exchange of equivalents and twenty-seven shillings' cost can only give twenty-seven shillings' value, how can there be profits without robbery? This is the next question to be considered.

How Economic Profits are Equitably Evolved.

I agree with Marx that, if profits have any legitimate economic existence, they must arise in the sphere of, and be subject to the law of, economic prices; and that the evolution of profits must therefore be sought in the process of economic production. It should be remembered, however, that the first condition of a scientific law is that it must explain existing and constantly recurring phenomena. This is just what Marx has not attempted to make his theory do. He formulated, or rather borrowed from Ricardo, the theory that the value of commodities equals the aggregate value of the factors consumed in their production — *i.e.* value equals cost. But in applying his theory, while assuming free competition, he deals only with a single producer; or if with more than one, he assumes that they all produce at the same cost per unit. Now this is precisely what does not occur. Uniform cost of production does not exist; it never has existed since the capitalistic system of production came into existence. The characteristic feature of that system is free competition among numerous producers who produce at an ever increasing variety of costs per unit of product. It is not surprising that Marx failed to find economic profits when he ignored the very conditions under which profits always exist.[1]

If we examine the economic movement under conditions of varying cost of production, we shall easily see how surplus value is economically possible without exploitation of the laborer and in strict accordance with Marx's own theory of value. Let us suppose that there are six (there may be six hundred) manufacturers or groups of manufacturers who produce the same grade

[1] The failure of Marx to recognize the influence of varying costs of competing producers upon the creation of surplus is the more surprising since Ricardo, of whom he was a close student, explicitly applied that principle in his law of rent.

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of cotton cloth and sell it in the same market. And let us further suppose (what actually exists on every side) that from various causes, *e.g.* different degrees of skill, different amounts of capital, *etc.*, the actual cost of making the cloth and placing it upon the market is slightly different in each case. For example, suppose that A, for whatever reason, produces at the greatest disadvantage and can barely make print cloth of 64x64 quality at a cost of four cents a yard; that B, through some economic advantage derived from larger capital or superior management or the like, can produce the same cloth at three and four-fifths cents a yard; C at three and three-fifths cents; D at three and two-fifths cents; E at three and one-fifth cents; and F at three cents. Under these conditions, and according to the law that value equals cost, what will be the price of the cloth? The self-interest both of consumers and of producers will make it impossible for the cloth to be sold at six different prices in the same market. If the price is fixed at the cost of production, and if (as is generally admitted) under economic freedom there cannot be two prices for the same article in the same market, then the price of all the cloth produced must necessarily be equal to the cost incurred by some one of the six producers. Which of the six occupies that price-making position?

Since the cost of A's product is the highest, his price will of course be the first to be affected by the pressure of the consumer to buy at the minimum. If A's cloth is to be sold, the downward movement of the price must necessarily be arrested at his cost of production. As his portion of the supply cost four cents a yard, that, so far as he is concerned, is the equivalent of the cloth, and that must be his minimum price. On the other hand, the consumer will not give more than four cents a yard; because B, who can make the same cloth for three and four-fifths cents, will gladly take four cents and make one-fifth of a cent profit rather than not sell. So long as the consumer can obtain the cloth from B for four cents a yard, he certainly will not give more than that for it to A. Therefore four cents a yard is both the lowest price A can afford to take and the

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highest he can possibly get. What A must have, all the others can have, and four cents a yard will be the selling-price of the whole product in that market.

Under these conditions A will sell exactly at cost. He, like Marx's producer, will give and receive *quid pro quo* and have no surplus or profit. All the other manufacturers, selling their product at the same price as A, give the same equivalent for what they receive; but at the same time, since they produce at less cost, they reap profits equal to the difference between their cost of production and A's. Here profit emerges, and the relative position of the various groups will be as follows:

Manufacturers.	*Cost per yard.*	*Price per yard.*	*Profit per yard.*	*Total Profits per 1000 yards.*
A.	4 cts.	4 cts.	0 cts.	$0.00
B.	$3\frac{4}{5}$ "	4 "	$\frac{1}{5}$ "	2.00
C.	$3\frac{3}{5}$ "	4 "	$\frac{2}{5}$ "	4.00
D.	$3\frac{2}{5}$ "	4 "	$\frac{3}{5}$ "	6.00
E.	$3\frac{1}{5}$ "	4 "	$\frac{4}{5}$ "	8.00
F.	3 "	4 "	1 "	10.00

All the conditions of economics and ethics have here been fulfilled; equivalent has been given for equivalent; value equals cost — and profits are produced. If it is asked why B, C, D, E and F should receive the same price for their cloth as A, when they can make it at a less cost, the answer is that they furnish the same equivalent for what they receive that he furnishes. To give A more than four cents a yard would be both inequitable and uneconomic: inequitable, because it would be giving more than an equivalent for the cloth; uneconomic, because it would be adding a burden to the consumer in order to give a premium to the most incompetent producer, thereby destroying the incentive for developing improved methods of production. All that the consumer can in equity demand or by economic law exact from the producer is that he shall obtain the full equivalent of his four cents. This he obtains from B and from all the others as completely as from A. The only difference between the six producers is that, from causes peculiar to themselves, some of them make nature do more than others.

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Nature does one-fourth more for F than for A, but they all do precisely the same for the consumer; they all give him a yard of exactly the same quality of cloth for four cents. The consumer has no claims upon B which A is not equally bound to satisfy. And if B should consent to sell at three and four-fifths cents a yard, nobody would continue to buy from A at four cents. There is no principle in equity which demands that B or C or D or E or F shall give more cloth for four cents than A gives; nor is there any law in economics by which they can be made to do so.

Moreover, the profits thus evolved are not only economic and equitable; they are actually beneficial to the community. They are not obtained by exploiting the laborer. They are the premium offered by economic law for the invention of superior methods of production, by the use of which the community, including the laborer, obtains an increasing amount of wealth for the same services. It is the community that ultimately reaps the greatest advantage; for the great profits of F constitute an incentive to increased production; and the only way F can insure the sale of his larger product is by underselling his competitors. Just as frequently as this occurs, the profits of the last profit-man are handed over to the community in lower prices. This is what is constantly taking place, as fast as the concentration of capital is increased and improved methods of production are employed. This movement is indicated in the following diagram:

DIAGRAM I.

PROFIT.	PRICE.	ACTUAL COST.	COST SAVED BY CAPITAL.	
1 c.	4 c.	Minimum cost . . . . . 3 c.	Source of Profits.	F
$\frac{4}{5}$ c.	4 c.	. . . . . $3\frac{1}{5}$ c.		E
$\frac{3}{4}$ c.	4 c.	. . . . . $3\frac{2}{5}$ c.		D
$\frac{2}{5}$ c.	4 c.	. . . . . $3\frac{3}{5}$ c.		C
$\frac{1}{5}$ c.	4 c.	. . . . . $3\frac{4}{5}$ c.		B
0 c.	4 c.	Maximum cost . . . . . 4 c.		A

It will be seen that A, who represents maximum cost, produces at four cents and sells at four cents and has no surplus;

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and that all the others as they save on the cost side increase on the surplus or profit side. That is to say, in proportion as they recede from the cost line of A on the right, they increase in the profit column on the left. It will also be seen that the increase in the profit column in no way affects the price column. It is simply a transfer from the cost side to the profit side of what is saved by the use of improved methods.

It is clear that the profits of B, C, D, E and F are not obtained at the expense of equity. They pay the same wages and they fulfil all the other economic requirements just as completely as does A, or as do the shoemaker or the farmer with whom they exchange their products. Their profits are due entirely to conditions peculiar to them, and come through them from nature and not from the consumer or laborer through injustice. And just as fast as the dearest man is undersold, these profits are passed to the public; and the only means by which the consequent diminution of profits can be checked is by capital making another draught upon nature. Thus capital, through the incentive of profit, becomes the constant means of exploiting nature for the benefit of society — instead of exploiting the laborer and consumer for the benefit of the capitalist, as Marx and his disciples so persistently claim.

If we pass to the sphere of labor, we find that the Ricardo-Marx theory is as inadequate to explain the price-making phenomena here as it is in the sphere of commodities. Marx admits that the value of labor power is determined by the cost of its production, just as is the value of commodities. According to his hypothesis, that the value of every pound of yarn must be equal to the sum of values that enter into its production, the value of every day's labor must be equal to the sum of values that enters into its production, *i.e.* the wages of every laborer must be equal to the cost of his own living. Now we know that in every industry the wages of the same class of laborers tend to uniformity, while the cost of living of the individual laborers varies greatly. For example: we know that, in New York city, painters, carpenters, bricklayers, cigar-makers, tailors, *etc.*, who work on the same grade of work or

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in the same shop get the same wages, but individually the cost of their living varies in some cases several dollars a week. On the Marxian hypothesis, that the capitalist who sells his yarn for more than it costs him exploits some of the factors of production, the laborer who obtains more for his labor than it cost him must also have exploited some other factor in the process. Marx would object to charging the laborer with robbery; his purpose is to prove the other man the thief. Yet if it is a scientific law in economics that the possession of a surplus proves exploitation, then a surplus in the hands of the laborer who has sold his labor power for more than it cost him is as conclusive evidence of exploitation as is a surplus in the hands of the capitalist who has sold his commodity for more than it cost him. Scientific law does not discriminate between individuals; there is no operation of natural law under which the laborer is an honest man and the capitalist a thief when both are doing the same thing. If the profits or surplus of the capitalist class necessarily represent the robbery of the laborer, then the hundreds of millions of dollars of surplus in savings-bank deposits and homesteads owned by the laborers prove that they must have unjustly exploited either the capitalist or their fellow laborers or the community.

A theory which thus puts vice at a premium and virtue at a discount, by showing that none but thieves succeed and that the only reward for honesty is failure and poverty, should only need stating in order to be rejected. But this is the logical result of Marx's theory of profits; a result, it is fair to assume, which neither Marx nor his followers would accept.

The other theory which I have presented puts an entirely different complexion on the whole matter. According to my hypothesis the value of labor is governed by the same law as that of everything else in the sphere of exchange; namely, by the cost of producing the most expensive portion. There is however an important distinction between these two classes of phenomena which should always be remembered when dealing with the value of commodities and of labor; namely, that while all price-creating phenomena are governed by the same law, the

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price of commodities and labor move in different directions. Although the value of both labor and commodities is determined by the cost of the most expensive portion of the necessary supply, that portion occupies opposite positions in the two cases. While the capitalists who furnish the most expensive portion of the supply of commodities are the poorest and lowest in their class (as shown in Diagram I), the laborers who furnish the most expensive portion of the supply of labor power are the best and highest in their class.

DIAGRAM II.

0 c.	$2	Maximum cost	$2	A
5 c.	$2	. . . . .	$1.95	B
10 c.	$2	. . . . .	$1.90	C
15 c.	$2	. . . . .	$1.85 Source	D
20 c.	$2	. . . . .	$1.80 of	E
25 c.	$2	Minimum cost.	$1.75 Savings.	F
SAVINGS.	WAGES.	ACTUAL COST.	COST SAVED BY CHEAP LIVING.	

Here it will be observed that all the movements are exactly the same as in the case of commodities (Diagram I); but the relative positions of all are reversed. Laborer A, like capitalist A, is the dearest. His labor power cost him $2.00 a day and he sells it for $2.00 a day and has no surplus. But instead of his being at the bottom of his class he is at the top. The wages of laborer A, like the price of capitalist A, is the same as (and fixes) that of all the others. In proportion as the cost of living of laborers B, C, D, E and F recedes from the cost line of A on the right does their net surplus increase in the savings column on the left. That is to say: in proportion as any of the other laborers live upon less than A they are enabled to sell their labor for more than it actually costs them. And the difference constitutes a net surplus either to be saved, expended upon luxuries or disposed of as the laborer sees fit. Thus the lowest laborers are enabled to obtain wages larger than the cost of their own labor because the dearest laborers are compelled to demand a higher price for their labor power in order to obtain

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the equivalent of its cost. That is why we frequently find that a certain portion of the class of low-paid laborers can save money, while a certain portion of a much higher class of laborers whose wages are double have great difficulty to make both ends meet; and that is why the most intelligent and best paid laborers are usually the most discontented.

Thus it is that in the progress of civilization the price of commodities and that of labor move inversely to each other; social welfare being promoted only when the price of commodities falls and that of labor rises. It will also be found that the movement by which wages rise, prices fall and society progresses, results from the struggle between the highest laborers and the lowest capitalists. This seemingly paradoxical position, according to which price phenomena move by the same law in opposite directions and social progress results from the pressure of the most advanced laborers against the most incompetent capitalists, is illustrated in Diagram III, in which the price movement of both labor and commodities are presented.

DIAGRAM III.

PROFIT.	PRICE.	ACTUAL COST.	COST SAVED BY CAPITAL.	
1 c.	4 c.	Minimum cost . . . . . 3 c.	Source	F
$\frac{4}{5}$ c.	4 c.	. . . . . $3\frac{1}{5}$ c.	of	E
$\frac{3}{4}$ c.	4 c.	. . . . . $3\frac{2}{5}$ c.	Profits.	D
$\frac{2}{5}$ c.	4 c.	. . . . . $3\frac{3}{5}$ c.		C
$\frac{1}{5}$ c.	4 c.	. . . . . $3\frac{4}{5}$ c.		B
0 c.	4 c.	Maximum cost . . . . . 4 c.		A
0 c.	$2	Maximum cost $2		A
5 c.	$2	. . . . . $1.95		B
10 c.	$2	. . . . . $1.90		C
15 c.	$2	. . . . . $1.85	Source	D
20 c.	$2	. . . . . $1.80	of	E
25 c.	$2	Minimum cost $1.75	Savings.	F
SAVINGS.	WAGES.	ACTUAL COST.	COST SAVED BY CHEAP LIVING.	

It will be seen here that laborer A, who is the dearest and highest in his class, and capitalist A, who is the dearest but

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the lowest in his class, come directly together. Occupying the price-fixing position in their class, both of them sell at cost and have no surplus; but all the capitalists above and all the laborers below A show a surplus in the left-hand column exactly in proportion as their cost line recedes on the right from that of A. Thus by the same law according to which the possibility of profits for manufacturers B, C, D, E and F is due to their ability to produce at less cost than A, the possibility of a surplus (savings) for laborers B, C, D, E and F is due to their cost of living being less than that of A. Clearly, therefore, the savings of the laborers and the profits of the capitalists both represent a net surplus due to their ability to produce labor power and commodities at less cost than the dearest of their class while selling it at the same price; and hence the surplus in each case is economically identical.

It will be seen that it is the most advanced laborer and the poorest capitalist who have no surplus, and the least expensive laborer and the most competent capitalist who have a surplus.[1] It would at first sight seem that the surplus should in both cases go to the highest in his class. The reason this is not the case is because, in the progress of society, the movement of the price of commodities is downwards while that of the price of labor is upwards. That is to say: the dearest laborer occupies the rising and progressive position, heading towards the brighter future, while the dearest capitalist occupies the declining position, receding into the dark past. The surplus of the less expensive laborers is the advantage they receive from the struggles of their more expensive brethren. More or less of this surplus is expended on what to them are luxuries, but by use become habitual wants. The dearest capitalist being at the bottom, the profits of the others do not, as in the case of

[1] The least expensive laborer is not necessarily the poorest laborer, either economically or socially. An unmarried man with a high standard of living will be less expensive than a married man with a large family with a low standard of living. The least expensive laborer is the poorest laborer only when other conditions are the same; but whatever makes the laborer less expensive than the dearest of his class enables him to have a surplus. For a more complete statement of this principle, see Wealth and Progress, pp. 92–95.

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labor, come from his superior struggles, but from their ability to make natural forces produce a greater quantity of wealth per unit of cost than he produces. Evidently, therefore, every movement for higher wages has to be made by laborer A, because, having no margin, he will be the first to feel the pressure of the new wants induced by the increasing complexity of his social environment. And in proportion as the luxuries of those below him, which consume the surplus he has created for them, become habitual wants, he is supported in his demand for an advance. And in every demand thus made by laborer A for higher wages, he is sure to meet the greatest resistance from capitalist A, who has no margin from which to give increased wages. And in proportion as the social pressure behind laborer A increases and he succeeds in obtaining an increase of wages, capitalist A is forced either to leave the business or to use the superior methods employed by those above him.

By this means the surplus of the profit-receiving capitalist is passed over to the laborer in higher wages. Whether this takes place through a fall in the price of the product or a rise in the price of labor amounts to the same; in either case the surplus passes from the capitalist to the community. In the manufacture of cotton cloth this has been repeated through the whole circuit several times during the present century; the price of cloth has been reduced from twenty to four cents a yard and the wages of the laborers have doubled.

Thus the highest and most expensive laborers are constantly obtaining the advantages created by the most competent capitalists, and the wages of the lower and cheaper laborers are being advanced by the efforts of the dearer laborers. Consequently, while the laborers and capitalists occupy relatively opposite positions, their efforts constitute a continuously progressive movement in which the efforts of the higher constantly tend to improve the condition of the lower; a thesis which the industrial and social progress of the present century conclusively demonstrates.

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The Rate of Surplus Value or Profits.

Having reached the conclusion that surplus value is robbery of the laborer and that this robbery is a necessary part of the economic system of production,[1] Marx infers, as a necessary consequence, that the only remedy for the social evils arising from this injustice is the abolition of the system which creates it. To justify such a revolution in our industrial institutions, Marx sees that it is not enough to show that surplus value is robbery, nor even that the robbery takes all the gain of civilization, but also that the actual and relative amount of the exploitation is inordinately large. To this end he makes a supreme effort. In the first place, he entirely repudiates the current practice of basing the rate of profits upon the capital invested. He insists that to spread the profits over the total capital invested is a device invented "by vulgar political economy" to make the exploitation of the laborer seem smaller than it really is. Since it is from labor and not from capital that profits are drawn, it is upon wages and not upon capital that the percentage of surplus should be estimated. He then gives examples to show that a surplus value, amounting to a small rate only when estimated upon the capital invested, amounts to a very high rate, frequently one hundred per cent, when estimated on the wages.[2] Indeed nearly all his examples (and they are numerous), whether drawn from hypothetical or actual cases, tend to show that surplus value amounts to one hundred per cent[3] —

[1] "The capitalist mode of production and accumulation and therefore capitalist private property have for their fundamental condition the annihilation of self-earned private property; in other words, the expropriation of the laborer." Marx's closing sentence in Capital, p. 800.

[2] *Ibid.* pp. 201, 533.

[3] "There is left the sum of £3 10*s.* 0*d.*, which is the variable capital advanced; and we see that a new value of £3 10*s.* 0*d.* + £3 11*s.* 0*d.* has been produced in its place. Therefore, $\frac{s}{v} = \frac{£3\ 11s.\ 0d.}{£3\ 10s.\ 0d.}$, giving a rate of surplus value of more than one hundred per cent. The laborer employs more than one-half of his working day in producing the surplus value." *Ibid.* p. 203. "Now, gentlemen, if you compare the working time you pay for, with that which you do not pay for, you will find that they are to one another, as half a day is to half a day; this gives a rate of one hundred per cent — and a very pretty percentage it is." *Ibid.* p. 211. Cf. pp. 176, 198, 200, 201, 204, 219, 220, 222, 289, 541, 542, 543, 544, 550, 592.

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i.e. equals wages — a notion which is finding acceptance even among economic writers who are not socialists.[1] This impression, created by Marx, is so widely diffused and so strong that one of the most prominent charges made by socialists against the present industrial system is that capital robs labor of half it produces.[2]

The actual rate of surplus value or profits, however, is wholly a question of fact; hence it is by facts that his or any conclusions as to the rate of profits must finally be tested. In order to test the scientific validity of this claim, I have made extensive investigations covering a number of years (in most cases ten years together) of the cost of production, wages, profits, *etc.*, in many of the largest concerns in the leading industries, where large capital and the most modern methods are employed.

Since Marx entirely rejects the idea of estimating the rate of profits on the capital invested and insists that it should be based on what the laborer receives, in order to fairly test his conclusions we must consider the facts from his standpoint. To do this we must eliminate all that is due to capital or fixed cost, and compare the rate of profits not with the capital invested but with the wages paid. Accordingly, in presenting the following data derived from four leading industries in which the capitalistic method of production is most thoroughly exemplified, I have taken no account of the capital invested, but only of the value of the finished product and the items of cost in its production, showing the actual amount and aliquot parts of raw material, plant *etc.*, wages and profits in the total product, and the ratio of wages to profits.

[1] See Stuart Wood, New Theory of Wages, *Quarterly Journal of Economics*, October, 1888, and July, 1889.

[2] "But the fact is — and on that we lay stress — that the *workers* receive only about half of what they produce." Gronlund, Modern Socialism, p. 23. This statement is accompanied by several diagrams and by statistics for the purpose of proving its literal correctness.

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Manufacture of Cotton Cloth.

The data in this table are drawn from ten of the largest and most successful corporations in Fall River, Massachusetts, and cover eight consecutive years since 1880 (1881–1888):

	Actual Amount.	*Percentage.*	*Ratio of wages to Profits.*
Raw material, plant, *etc.*[1]	$35,480,320.94	66.05	
Wages	15,324,089.07	28.52	
Profits[2]	2,916,783.49	05.43	
Total value of product	$53,721,193.46	100.00	$5\frac{25}{100}$ to 1

Manufacture of Shoes.

This table gives results obtained in one of the most permanent and successful shoe manufacturing concerns in New England, for ten years ending 1888:

	Actual Amount.	*Percentage.*	*Ratio of wages to Profits.*
Raw material, plant, *etc.*	$640,963.70	68.19	
Wages	272,019.70	28.95	
Profits	26,977.91	02.86	
Total value of product	$939,691.11	100.00	$10\frac{11}{100}$ to 1

Manufacture of Packing Cases.

This table represents the operations of the largest concern of its kind in the country, for four years:

	Actual Amount.	*Percentage.*	*Ratio of wages to Profits.*
Raw material, plant, *etc.*	$20,200,000	93.52	
Wages	1,080,000	05.00	
Profits	320,000	01.48	
Total value of product	$21,600,000	100.00	$3\frac{37}{100}$ to 1

[1] Under the head of raw material, plant, *etc.*, are included all repairs, wear and tear of machinery, insurance, taxes, transient supplies, *etc.* I have in every instance given the full particulars, but have grouped them under this brief heading for convenience of presentation.

[2] Profits represent the surplus after all costs are paid, and include interest.

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RAILROADING.

This table represents one of the largest and most profitable Trunk Lines running out of New York, for 1888:

	Actual Amount.	*Percentage.*	*Ratio of wages to Profits.*
Raw material, plant, *etc.*	$19,997,092.97	55.34	
Wages	12,460,708.89	34.49	
Profits	3,675,118.55	10.17	
Total value of product .	$36,132,920.41	100.00	$3\frac{38}{100}$ to 1

GENERAL SUMMARY.

This table represents all the other four combined, and therefore shows the ratio of wages to profits in the whole four industries, representing a product of over $112,000,000:

	Actual Amount.	*Percentage.*	*Ratio of wages to Profits.*
Raw material, plant, *etc.*	$76,318,207.91	67.98	
Wages	29,136,717.46	25.93	
Profits	6,938,879.61	06.09	
Total value of product .	$112,393,804.98	100.00	$4\frac{20}{100}$ to 1.

It will be seen, from the above data, that so far from profits being equal to wages, they are nowhere one-fourth as large as wages. Where the profits are highest, wages are 337 per cent greater than profits; and where they are lowest, wages are 1000 per cent greater than profits. It must be remembered, moreover, that these enterprises are not earning low, nor even average, but high profits, being among the best of their respective classes in the country. From the data I have collected it is quite clear that there is a portion (and in some industries a large portion) of concerns which during the same period have made no profits at all.

Although I have the facts of many no-profit concerns, the data are not sufficient to give the proportion of these in each industry represented above. The complete data for one of them, however — for the railroads — are furnished by Professor Henry C. Adams, statistician to the interstate commerce commission, in his recent report (1889) which is the most complete

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report of its kind ever published. According to the data presented by Professor Adams, out of the $3,864,468,055 invested in the railroads of the United States $2,374,200,906 or 61.44 per cent received no profits whatever in 1888, and only eleven one-hundredths of one per cent received from nine to ten per cent profit.[1] That is to say: $2,374,200,906 of capital, representing about 84,000 miles of railroads (equal to four and a half times the entire railroad system of Great Britain), was used without profits in 1888, while only about one-tenth of one per cent of the capital invested in the whole 136,830 miles of railroad yielded a profit of ten per cent. What is true of railroads is substantially true of all other industries where an increasing amount of capital and improved methods are employed. Clearly, therefore, the claim of Marx and his disciples that profits equal wages is as baseless in fact as his doctrine of the "exploitation of labor power" is false in theory.

GEORGE GUNTON.

[1] Statistics of Railways in the United States, p. 21.

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STATISTICS OF MARRIAGE AND DIVORCE.[1]

THE appearance of this thick volume marks a great stride in the knowledge both of the laws and their operation regarding these most fundamental of social problems. In statistics especially the gain is immense. Twenty years ago President Woolsey's *Divorce and Divorce Legislation* contained in a dozen scanty pages about all the existing statistics regarding both this country and Europe. Since then, the collection of their own statistics by four or five more states (in a meagre way, excepting the excellent work in Massachusetts begun by Mr. Wright, the commissioner of labor in 1879 and continued since under provision of statute); the few additions by the National Divorce Reform league; the little pamphlet of Sig. Bodio of Italy in 1882; the *Étude demographique du divorce* of Mr. Bertillon in 1883 (which, however, added comparatively little except in details to the work of Bodio), and some continental official publications in very recent years have pretty much covered all that could be got at even in libraries. No good collection of these in a single volume could be had. And for a compendium of our own laws of marriage and divorce, we have had to resort to various handbooks, generally unsatisfying to the student and mostly so untrustworthy or meagre as to disappoint him. The laws of Europe, beyond the account of divorce law given in Woolsey, were not easily accessible. But a knowledge of these for historical and comparative study and the purposes of practical legislation and social reform is invaluable. The work of Vraye and Gode (Paris, 1887) has, very recently, given a sketch of European laws of divorce.

This report has changed all this. We now have a good handbook for the legislator and student. That it has many and

[1] A Report on Marriage and Divorce in the United States, 1867 to 1886: including an appendix relating to Marriage and Divorce in certain countries in Europe. By Carroll D. Wright, Commissioner of Labor, February, 1889, Washington: Government Printing Office.

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serious limitations probably none understand better than those who have had most to do with it. But there can be little doubt that every one who will read the introduction, which recounts the official history of the tedious work that has led to this report and briefly tells us the difficulties that beset the path of the commissioner and the reasons for his selections, will applaud the skill and industry displayed while heartily commending the plan and execution. Certainly one who has had the best of opportunities to know something of the greatness of the task and the scientific and practical difficulties that have been surmounted does not hesitate to express here his strongest commendation of the way in which the commissioner and his trained force have done their work. Few classes of scholars and practical men encounter more difficulties than statisticians, even when they are officials, having at their command so admirable resources as the department of labor now possesses. And yet it may be expected that the present report, merely as a piece of good workmanship, will take very high rank among the thirty or so volumes which this distinguished statistician has given to the public during his official life in Boston and Washington; while the importance of its subjects, the range of its figures, covering two continents, their instructive surprises for the general public and even for most well-informed people, the condition of law and practice which it discovers, and the subtleness, general steadiness and sweep of the great social movement it reveals, must put it in the very front rank of official publications. Its 1074 pages bring together from original sources in an exact order, with clear statement, a vast amount of hitherto unpublished material and put along with this in condensed form nearly all kindred matter that could be found in previous publications. It must immediately become the leading authority in its field, while its references to the published sources of information will guide the student to the best authorities elsewhere.

The writer of this article has consented to give some account of its material, especially that relating to the social aspects of the problem of marriage and divorce, with the understanding

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that the legal problems presented in the report shall be treated in another paper and by another hand. It is the conviction of the present writer that there is a rich field here for the trained student of the science of law, especially under the historical and comparative methods, and one which may yield practical results of the greatest value. It is proposed in this article to let the report speak largely for itself and in the order of its arrangement.

At the outset, let me call attention to the introduction, in which the commissioner, after recounting the official history of the investigation, discusses the reasons which determined its scope and method; points out the important sociological questions that have been necessarily passed over, because they lie beyond the reach of his means and instrumentalities; and urges most forcibly the duty of a better system of records both of marriage and divorce throughout the country. Every thoughtful citizen, as well as every student, will most heartily thank Mr. Wright for saying that libels for divorce throughout the country should, in addition to the points now given, be required by law to furnish full facts as to the place of birth, age and occupation of the parties; whether the marriage sought to be dissolved is the first or a subsequent marriage; and whether the parties, or either of them, have before been parties to a divorce suit. More urgent still is his call for "the strictest legislation relative to the condition of records." He says: "The civil status of parties, their property, the legitimacy of children, are jeoparded in many instances by the reckless manner in which records are kept." This is none too strongly put; for I learn that in some counties attorneys and others have practically free access to the files of courts, and libels and other papers are too frequently actually stolen or used for disreputable purposes.

The records of marriages are still more neglected. Only twenty-one states require any return to be made to a state officer. "Only a very few states make marriage registration compulsory." And, in some of these, returns are imperfectly made; the facts given are few and, "as a rule, are compiled so care-

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lessly as to be nearly worthless." The report makes suggestions here similar to those regarding divorce, and adds, "if such laws could compel registration, a great point in statistical science would be gained, and not only a point in this science gained, but a matter of the very greatest value to the welfare of all parties concerned." Let any one turn to the appendix, relating to Europe, and especially let him study in the original sources the provisions in many European countries by which a marriage may be traced from the beginning to the end of it (whether by death or divorce), and he will be still further impressed with the importance of these remarks of the commissioner. The evidences of a marriage or divorce are most wretchedly guarded in the records of most of our states. Indeed, it was the expectation of those who have urged the incorporation of marriage with divorce as the subject of this report that the value of the part relating to marriage would be more in its exhibition of the public negligence regarding statistics of marriage than in its positive information.

Of course, some knowledge of the statutes regulating marriage and divorce are indispensable to the understanding of the statistics. Besides this, there has been very great need of a correct and, if possible, official compilation of the points of the various laws on these subjects. By skilful devices of arrangement, the report brings into the space of one hundred pages a complete digest of the various statutes. This may be trusted for its accuracy and will be heartily praised for its ease of use. It was prepared under the immediate care of Messrs. Olmstead and Keller, two lawyers (and officers of the department) of great experience in the work of statistical compilation, and every possible precaution was taken to secure accuracy.

It is noteworthy that neither the national nor any state constitution has any provision touching the subjects of the report. The family has not yet come into the direct control of the organic laws of our country.

Several states and territories[1] define marriage in their stat-

[1] For convenience the word *state* will be used in this article to designate any of the forty-seven political divisions of the country, including the district of Columbia.

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utes. Eighteen of these define marriage as a civil contract. Others state that "marriage is a *status* acquired by the parties thereto by virtue of the contract, which is executed by consummation." Three of them, California, Dakota and Idaho, say that "marriage is a personal relation, arising out of a civil contract, to which the consent of parties capable of making it" is necessary. Georgia and Pennsylvania formally announce the encouragement of marriage. Other states forbid its discouragement. Thirteen states make illegitimate children legitimate by marriage of parents, and twenty-four others add to this a requirement for the acknowledgment of the father. Thirteen declare expressly that marriages contracted beyond their territory are valid in the state if valid where contracted. Only two or three make any attempt to restrict the marriage in another state of their own citizens contrary to their own laws. A table, with many explanatory notes added, puts before the eye the provisions of the states regarding ages at which minors are capable of marrying; ages below which parental consent is required, and the character of the consent, whether written, verbal or unspecified, and whether for license or solemnization. No less than sixteen make no provision at all as to the age at which minors may marry. Five probably leave this matter to the common law as interpreted by the courts. Four fail to make provision for parental consent below some specified age; and a large number either say this consent may be written or verbal, or fail to specify the manner of it.

It would take too much space to set forth the prohibited degrees of consanguinity or relationship within which marriages are forbidden. But the statement of them, their variety, conflicting character, and frequent extreme meagreness, are painfully interesting, especially when we recall the point just made as to the validity given in most states to the acts performed in another. The record of these restrictions in some states is astonishingly brief. For Indiana, Ohio and Nevada, for example, the report simply says: "Persons not nearer of kin than second cousins, and otherwise competent," may marry. Great difficulty was found by the compilers in making a correct

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classification of the statutes relating to void, voidable and prohibited marriages; but it is clear that much confusion prevails as between the several states. The states are, however, taken up *seriatim*, and their laws stated.

Another table, with several pages of notes, sets forth the laws regarding licenses, their official sources, and fees. These official sources comprise town clerks, registrars of births, marriages, *etc.*, clerks of probate, county courts, circuit or other courts, judges of probate, registrars of deeds, county auditors, and so on, according to the state. No license or certificate is required in the seven divisions not named in the table. Of these the great state of New York is one. The fee for this license runs all the way from fifty cents to three dollars. There is sometimes variety in the fees of the same state. For example: the state fee in Minnesota is two dollars; but in Ramsay county it is one dollar and a half and in the adjoining county of Hennepin it is only a dollar. People can marry in St. Paul for one of these sums and in Minneapolis for the other. In Oregon the state fee is two dollars; but it is specially provided that in eight counties the fee shall be two dollars and a half, while in four others "the county clerks shall receive for their services an additional compensation of 33⅓ per cent, making the fees in those counties $2.67." It is evidently for the interest of parties in Delaware, where the fees also vary and may be as high as $2.83, to visit Maryland and save $1.83 towards the trip or go to Pennsylvania and get a license for fifty cents, or into New Jersey where no license at all is required. How extensively these privileges are used the report apparently does not show. But it has been said that some thousands of Philadelphians are annually married in Camden to escape the simple and inexpensive rules lately made by their own state. A similar state of things existed forty years ago or more in Connecticut, but passed away when this state enacted a law similar to that of Massachusetts. In Maryland the publication of banns may take the place of a license. In seven states, the license must issue from the county in which the woman to be married resides; and in ten others, in the county where the marriage is to take

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place. Connecticut restricts the issue of the license to the town in which the marriage is to be celebrated, and the license authorizes marriage in that town only. A few other states approach this rule. In Kansas it must be issued by the probate judge of the "proper county." The officer in some states is required or has authority to ascertain certain facts as to age, *etc.*, sometimes under oath. Oregon only requires this to be the oath of a third person. Massachusetts alone seems to require any notice of marriage intentions prior to the issue of the license, which is there called the certificate. But in most states the marriage of persons who are strangers to all officials seems to be freely allowed on their unverified statement of the required facts, or without any statements whatever. Nothing of this sort seems to be tolerated anywhere in Europe.

All the states except Pennsylvania and South Carolina expressly define the classes of persons who may celebrate marriage. These mostly come under four classes: ministers, *etc.*; in the large majority of states, judges of one or more classes of courts; justices of the peace in all but six, including the district of Columbia; and, in most, according to customs of Quakers or other religious societies having peculiar forms of their own. Of justices of the peace, there are 7658 in Massachusetts alone who have been commissioned in the last six years, and 3225 in Maine commissioned since 1880, and so on downward. Of the possibility of abuse of the privilege and the consequent effect upon the religious tone of society and public morals, the reader must judge for himself. There are no statistics bearing on the subject in the report. In early times I believe the celebration of marriage in Massachusetts was forbidden the clergy, it being made purely a civil affair through dread of ecclesiasticism. A few years ago it was found that over ninety per cent of the marriages of one year were celebrated by clergymen. The form of celebration in all the states is practically free to the celebrant, except that consent of parties is required.

The presence of one witness is required in Dakota and New York. Two are necessary in eleven states, and in Louisiana three are required. The reader will bear in mind that the courts

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in eighteen states and in the district clearly hold marriage by simple consent, without license or celebration (and, in some of these states, without witnesses even) to be valid.[1] It is often provided by statute that marriage is not invalidated by informalities. Fees are generally prescribed (but usually only for marriage before civil officers) from one to five dollars in amount, or a voluntary sum. Sixteen states make provision for giving certificates of the marriage to the parties, usually upon request. The person solemnizing the marriage "is, in nearly all the states and territories, required to make a written return or certificate thereof (upon the license or separate therefrom) to some official authorized to receive, and, except in New Jersey, required to record, the same." Sixteen states require the officiating person to keep a record of his own. In addition to the requirements of the territorial statutes, Congress[2] requires that in all the territories a certificate of every marriage must be filed in the probate court or its equivalent. Only a few states require or provide that citizens married in other states shall file a certificate on return.

The general facts about divorce laws are so much better known than those regarding marriage laws that the former need not detain us long. Legislative divorces are now prohibited in the territories and in most of the states. Two juries in Georgia must pronounce concurrent verdicts in favor of a divorce at different terms of court before it can be granted. This at least is the constitutional provision. Jurisdiction is distributed variously, according to the statutes and the structure of courts, to county, district, circuit, superior, supreme or chancery and "chancery side" of circuit courts. Several states seem to make no provision as to which county or court it must be, though some provision is the general rule. *Bona-fide* residence in the state is now the statutory rule in all the country. But the mere declaration of an intention of residence once allowed parties to seek divorce in Utah, and the statistics for the years

[1] Mr. F. G. Cook in the third of his four valuable articles on the marriage celebration in Europe and this country in the *Atlantic Monthly* for February–May, 1888. The statement cited is in the April article.

[2] Act of March 3, 1887.

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1876 and 1877 show how shamefully it was abused. The required residence is only ninety days in Dakota, six months in Arizona, California, Idaho, Nebraska, Nevada, New Mexico, Texas, Wyoming. No limit is fixed in Louisiana, but the residence must practically be *bona-fide*. Some of these states require residence for the statutory period in the county where suit is brought. In several the limit is one year. The report makes the statement that "the statutes of eight states and territories below named specifically provide, in effect, that if a married woman dwells within the state at the time of bringing an action for divorce, she is deemed a resident thereof for the purpose of such action, regardless of her husband's residence."

In some states reasonable care is taken that notice be served upon the defendant. In others the provisions on this point evidently admit of great abuse, it being left to the unsupported affidavit of some interested person or to the mere statement of the applicant to determine the fact of absence beyond reach of the court. Notice by publication or mail or both is frequently recognized as sufficient. In 45 counties specially investigated, out of 29,665 cases personal service was made in 17,040 and notice by publication was served in 9944, leaving 2681 "unknown" cases. A few larger counties will show interesting figures. In New Haven, Connecticut, 26.5 per cent of the cases where a definite "yes" or "no" was the answer reported, were notified by newspaper publication; 43.5 per cent in Cook county, Illinois, 32.2 per cent in Marion county (Indianapolis), Indiana, and 25.8 per cent in Suffolk county (Boston), Massachusetts.

The causes established by statute are too well known to need anything beyond mere mention. Except in South Carolina, where divorce has never been granted except for a short period soon after the civil war, absolute divorce is granted for anywhere from one cause (in New York) to fourteen (in New Hampshire). New Jersey, strictly speaking, allows absolute divorce for only two causes. The causes throughout the country count up to forty-two in number. One of them, allowing divorce at the discretion of the courts, which formerly existed in Maine, Connecticut, and Arizona, is now found only in Washington terri-

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tory. Some of these causes are trivial or singular; such as living apart (voluntary separation), in Kentucky and Wisconsin; refusal on the part of the wife "to remove with her husband to this state" (Tennessee); and in Florida "habitual indulgence in violent and ungovernable temper."

Limited divorce (the old separation "from bed and board") exists on the statute book in twenty of the forty-seven states and territories. Unfortunately the report seems to have been unable to supply the figures showing just how many separations there are of this class. But in most states very few divorces would come under this head.

A half-dozen states only provide for the resistance of petitions for divorce by attorneys appointed for the purpose by the court or by the prosecuting attorney of the jurisdiction. Singularly enough, Indiana is one of these. No light is shed on the fidelity with which this safeguard is used. Provision for alimony is made in all the states; and in seven alimony, or an allowance similar in nature, may be decreed to the husband as well as to the wife. In the majority of statutes, collusion, connivance, condonation and recrimination are made fatal to an application for divorce. Sixteen states provide that suits for divorce, especially in cases of adultery (but some for a few other causes also), must be brought within a limited time. In all states but three (Delaware, Maine and Massachusetts, where a divorce secured elsewhere against their own laws is invalid in the state) a divorce decreed in any other state is valid in the state whence the parties went to obtain it. Indiana takes pains to put this concession upon its statute book without qualification. Eighteen states provide for change of name of any woman to whom the divorce is granted. The report bears testimony to the fidelity of the Roman Catholic church and the good results of its influence. It gives some curious information as to Mormon practices, but these do not concern our present object.

I have less space than I could wish for an account of European laws of marriage and divorce. Otherwise I should be tempted to reproduce in full the digest of the first that comes

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under the eye, that of Austria, or the marriage law of Germany, which has been in force throughout the empire since 1876. Generally it may be said that marriage in Europe is now strictly a civil act, though place is made for a religious service where desired. The improved laws of European countries are generally parts of a carefully prepared scientific whole, some of the later systems, as in Germany and Switzerland, being the work of eminent law professors. The legal age of marriage; degrees of consanguineous or other relationship; consent of parents (a much more real thing in Europe than here); rules for notice of intention; provision for verifying the facts alleged, often including certification both of the fact and means of the dissolution of a previous marriage, whether by death or divorce; strict requirements for publication; restrictions as to locality within which the marriage must occur; generally, provisions that ten months or a year, except by special dispensation, must intervene between the dissolution of one marriage and the contraction of another; express provisions that a person divorced for adultery cannot marry a paramour; the most careful registration (and report to the statistical bureaus) of marriages as well as divorces, — these are almost invariable features of European marriage laws. In some countries the restrictions upon the marriage of soldiers in the ranks are accompanied with illicit relations and illegitimate births; but often these are such more in technical form than in reality, as many of these parties are faithful and a legal marriage follows the expiration of the term of service. In some countries, an entry of the dissolution of a marriage by divorce as well as death must be made on the margin of the original entry of the marriage, whence the fact must be certified in case of a remarriage by one or both of the parties. Bigamy or similar violation of the marriage laws is thus rendered extremely difficult. It may be unwise to attempt to reproduce these safeguards in the United States. But certainly these regulations are highly suggestive. A few years ago persons who specially investigated the matter were forced to the conclusion that the bigamies in one of the best states in the country, which has one of the best of our American mar-

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riage laws and a fairly well administered divorce law of the liberal type, were nearly as numerous as the divorces. It is, as is well known, entirely easy for persons with easy consciences to obtain a license and secure a formal marriage before a clergyman or other officer and have it duly recorded, with many chances in their favor as against detection and conviction of crime. The report will undoubtedly direct attention to this important matter and give us a clew to some remedies.

Divorce in Europe is very unlike divorce in the United States. There is but a single divorce court for England and Wales, and in few (if any) European countries do the courts having jurisdiction of divorce correspond to the ordinary county courts of this country. The causes for which divorce may be granted in some countries in Europe are scarcely fewer than those in the United States, even extending to divorce by mutual consent. But the administration is far more carefully controlled than here. Belgium and some other parts of Europe are still governed by the Code Napoléon. But divorce by mutual consent is admissible only where the husband is at least twenty-five years old and the wife twenty-one, and is not allowed after twenty years of married life, or when the wife has reached her forty-fifth year. Attempts at reconciliation before divorce is decreed must be made in Holland and some other countries, though of late Prussia seems to have dropped the practice. A special feature of some legislations is judicial separation for a period of years (in Holland for five years), capable of conversion into absolute divorce at the end of the period. There were from six to fourteen of these separations annually in Holland among a number of divorces ranging from 200 to 400. An active public opponent in the interests of the state is a common thing in Europe.

Nearly one hundred pages of the report are devoted to an analysis of the tables. The investigation covers a period of twenty years, 1867–1886; and the European figures include the same period, with some exceptions running back to include all known statistics of Europe that are drawn from trustworthy sources. So bad are the conditions for the returns of marriage from the divisions smaller than counties, that returns are ob-

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tained from only 1728 out of the 2627 counties in the United States, or sixty-six per cent of the whole. Only six of the forty-seven territorial divisions give practically complete returns, but nine other states are thought to have fairly good statistics of marriage. Twenty-one states, however, have some form of state registration.

Returns for divorce were secured from 2496 counties, or ninety-five per cent, covering ninety-eight per cent of the population. The loss of many court houses by fire, including those in the important cities of Chicago and Cleveland, leaves a blank in the statistics for a few years in each case. But the success of the work is phenomenal. The methods of original investigation, generally by trained experts under careful instruction and almost daily direct supervision, insured this. The points covered by the inquiry were selected from a full outline (by the present writer) of the desirable points, enumerated to cover all the conceivable features of an ideal plan, increased where possible from the suggestions of many further conversations and the researches of the commissioner and his chief clerks. The task of collecting trustworthy data upon even a few of these facts was a very great one. Certain selections had to be made, depending upon a variety of reasons whose full force only the experienced master of practical statistics could adequately feel. Having had unusual opportunities to know much of the work from its inception to its practical conclusion, I have no hesitation in saying that it is in a high degree satisfactory. The great ability of Mr. Wright, his mastery of statistical methods, his insight and fertility in meeting difficulties and his tact in securing the most efficient and enthusiastic co-operation of an admirable statistical force, though matters of general recognition in this country and Europe, are sure to grow upon those who are privileged to come into the closer relations of actual work. The government can hardly have a more valuable institution at its service than this great statistical department, and its similar bureaus in some of the other departments. This is probably the best organized of any of the statistical offices in the country.

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The movement of marriages is not analyzed, probably in part because so few states afford sufficient data for the work. Industrial and other causes affect marriage so much that it is very difficult to do this, and really the chief value of collecting marriage statistics in the present condition of returns must be for use in a few comparisons with divorces and to show the need of better registration and returns.

But on the movement of divorce, the material of the report is rich. A few only of the more important figures will be given in this article. The total divorces reported for the United States during the twenty years — including limited divorces, or the separation *a mensa et thoro* of the old English law, which is now more generally termed in Europe judicial separation—is 328,716. There were 9937 in 1867 and 25,535 in 1886, an increase of 156.9 per cent. The increase of population during the same period could have been little more than 60 per cent. By quinquennial periods, the movement shows a remarkable uniformity. There were 53,574 in the first five years and 68,547 in the second, an increase of 27.9 per cent; in the third 89,284, an increase of 30.3 per cent over the second; and 117,311 in the fourth, or 31.4 per cent more than in the third. Connecticut, Maine and Vermont are the only states out of the forty-seven political divisions in which a real decrease appears at the close of the period. This is undoubtedly due to reforms in the law. The amendment of the laws of Indiana in 1873 bore good fruit in the decrease of divorces. Michigan, it should be said, changed her divorce laws for the better in 1887 and will probably show a corresponding improvement in her statistics for the following years. The report gives many examples, fairly taken from sections North, East, West and South, to show the relative movement. It is careful to avoid states of exceptional conditions. I think that by far the most rapid increase, compared with the increase of population, has occurred in the South, though the rates there are still generally lower than in the North. At first many of the Southern states increased their divorces astonishingly beyond experience elsewhere. The increase was apparently due to changed social conditions, and occurred probably

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largely among the blacks. Later the increase was usually, but not always, less rapid. Indeed, the general and natural rule seems to be that divorces increase rapidly up to a high point and then the movement is less rapid. (My own examination of statistics of earlier periods than that of the report tends to show this.) A table exhibits the movement in each state, both of divorces and population, between the census years 1870 and 1880. This shows an increase in population of 30.1 per cent and in divorces of 79.4, which is about the same rate as in the estimates for longer periods. The statistics of European countries show a striking parallel movement. In fact, the percentages of increase on the two continents are very nearly alike, even after allowing for differences in the increase of population. As Mr. Wright justly remarks, these tables alone would indicate that a great social movement, not only in this country but in Europe, has taken place contemporaneously in the direction of increased divorces.

An original contribution is made by Mr. Wright in a calculation, from a study of the material of a few states, of the probable number of married couples in the country in the two census years of the period. This had to be done because of the failure of the census of 1880 to compile its collected data, a lack that we shall feel still more seriously when we come to study the probable migration of persons expressly to obtain divorce. Tests showed the variation of the results of this method from the exact facts to be everywhere less than one-half of one per cent. By this method the ratio of divorces to existing married couples in 1870 was found to be one to 664, and in 1880 one to 481. This shows the ratio of estimated married couples in 1870 to the ratio of estimated married couples in 1880 to be 1 to 1.30, unity being the condition in 1870. But the ratio of divorces in 1870 to the ratio of divorces in 1880 was 1 to 1.79.

The general fact seems to be established by the report that cities have, as a rule to which there are some exceptions, a higher divorce rate and a more rapid increase in divorce than the country counties. But the exceptions in 1870 (Brooklyn,

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Detroit, Omaha, Pittsburgh, Allegheny City, and Portland) were no longer such in 1880. I should say that the figures show as a rule that in the cities the divorce rate is on the average fifty per cent higher than in the rest of their respective states. The case of Baltimore, where it is six times the rate of the state outside, is exceptional. But in most states, without doubt, some rural counties can be found which invariably show a higher rate than those containing the large city of the state.

As regards the ratio of divorces to marriages, six states report marriages fully enough for a trustworthy comparison. Of these, Connecticut has for the entire period a divorce to 11.32 marriages and for the worst year, 1875, one to 8.81; Rhode Island gives one to 11.11 for the period and one to 9.36 in 1884, closely approaching that for the three preceding years; Vermont one to 16.96 for the period and at its worst, in 1871, one to 13; Massachusetts gives one to 31.28 for the period, its worst being one to 22.54 in 1878; Ohio averages one to 20.65, with an almost unvarying progress downward to one to 15.16 in 1886. In some other states, where marriages are less fully reported, the ratios are as follows: Illinois one to 14.76 for the period, while Cook county gives one to 13.6; Michigan one to 12.92; Minnesota one to 30.05; New Hampshire one to 9.74 (its lowest, one to 7.6 in 1880, being evidently due to very imperfect returns of marriages); New Jersey shows one to 49.39; Kansas gives one to 17.42; Wisconsin one to 21.07, and Delaware one to 36.99. These last, it should be noted, are some of them for shorter periods than twenty years. On the basis of ratio of divorces to (estimated) married couples in 1880, I find the worst states (in their order) are Colorado, Nevada, Wyoming, Oregon, Montana, New Hampshire, Rhode Island, Washington, Maine, California, *etc.*; Connecticut appearing as the twentieth on the list; Massachusetts the thirtieth from the worst; New York the thirty-fifth, and Delaware as the best. In later years these positions are somewhat changed.

In seventy counties in twelve states it was found that 67.8 per cent of the applications for divorce were granted. The commissioner thinks this fact shows reasonable care in the trial

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of suits. Some, however, will be inclined to differ with him on this point.

No part of the report will be read with more interest than that relating to the place of marriage of divorced parties; for it gives the best single clew we have to the extent of the migration of parties from the state of their proper residence to some other for the sake of divorce. It is on the supposed greatness of this migration, together with the need of protecting the people from the other mischiefs of conflicting laws, that there has been a general popular demand for uniform divorce laws. Many otherwise highly intelligent persons and some able newspapers have held that uniform laws would at once cut off one-half or even more of the divorces. The investigation has brought out the first really full material for any conclusion based on knowledge of facts. It was, I may say, my own dissent from the current opinion and the incredulity with which my own conclusion was received, that the amount of this migration could not be over ten or fifteen per cent at the utmost, that immediately led me to propose this investigation to Congress. For I thought it both unsafe and impracticable to entertain seriously the proposition for so radical a change in our constitution as the movement for a national law involved, even if the facts were generally as claimed, without careful statistical investigation. Other reasons, of course, had great force.[1]

This point was made the subject of much thought in planning the work. The most important single clue that could be practically followed was that afforded by the statement in the libels of the date and place of marriage. This would at once eliminate from the total of divorced persons those who were married and

[1] Judge Poland in reporting for the judiciary committee of the House went somewhat farther than the facts justified when he said: "Nor do we understand that the petitioners have in mind any purpose to ask an amendment of the constitution whereby Congress shall be empowered to legislate on these subjects." For undoubtedly a few of them, like the majority of the people, assumed such an amendment to be the only way out of present difficulties. But the great object most of us had was to obtain, by means of the general information which Judge Poland and the petitions set forth as our object, a substantial basis for an opinion on the point. As I wrote an eminent jurist at the time, who with many others assumed that we aimed at constitutional amendment, we then "did not seek *legislation* but *revelation*."

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divorced in the same state; for, with inconsiderable exceptions, those who had been married in the state where they afterwards obtained a divorce may be assumed to have resided in that state during the intervening years. After this elimination, the remaining total would include both those who had migrated from the state in which they were married to the place of divorce for permanent residence, and also that class, popularly supposed to be immensely great, who had gone from one state to another for the express purpose of obtaining a divorce more conveniently than at home. This would also, in the absence of any better source of information, throw some light upon the extent of divorces among immigrants from Europe.

It is found that of the 328,716 divorces in the United States in the twenty years, excepting forty-two cases in the Indian territory and Alaska, the place of marriage was not given in 31,389 cases. More than one-fourth of these were in Connecticut, where it would seem that no account of this point is made in libels for divorce. Only 7739 were married in foreign countries. But of the 289,546 whose place of marriage was known to be in the United States, 231,867 or 80.1 per cent were married in the same state in which the divorce was granted, and only 57,679 or 19.9 per cent were married in some other state than the one in which the divorce was obtained. Now the duration of a marriage before divorce in this country is shown by the investigation to average 9.17 years, which may properly be taken to be nearly, if not quite two-fifths the duration of the average marriage before death or divorce dissolves the union. A large subtraction must therefore be made from this 57,679 or 19.9 per cent, to bring it down to the figure that will approximately represent the extent of migration for the direct purpose of divorce. Some further clew is given to the extent of the reduction to be made when we learn that in 1870 there were 23.2 per cent of the "native-born" population living in territories other than the place of birth, and in 1880 22.1 per cent.[1] But this, of course, includes all ages, while marriages and

[1] Since the above was written, I have worked out the percentages for four years in the period; 1867, 1870, 1880, 1886. The per cent of divorces from the mar-

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divorces come from the adult half. Had the last census given us, as it might have done, the conjugal condition of the people, or even the place of birth of adults, we should have been able to fix the amount of migration for divorce with reasonable certainty. Or if the next census will do this, the fact may be approximately ascertained.

But the report affords further light. A table is made showing for each state the number of those divorced who were married in the state named, in an adjoining state, or in some other state not adjoining. New York affords a good test, because its own limitation of absolute divorce to one cause and the favorable conditions as to causes, residence, *etc.*, of certain adjoining states, are generally thought to send large numbers elsewhere for divorce, especially to Rhode Island and Pennsylvania. But the working table — which the commissioner could not incorporate in the report without making it too large, but which is carefully preserved and which ought to be printed hereafter — shows that while 16,020 divorces were granted in Pennsylvania only 765 of the marriages thus dissolved had taken place in New York. That is to say, 4.8 per cent of the divorces of Pennsylvania came from marriages in New York. If the contribution of population by New York to Pennsylvania in 1880 be a criterion, there should have been at least 2.3 per cent. Take Rhode Island. Out of 4462 divorces in twenty years, only 97 were of parties married in New York. It must be remembered that a residence of one year in each of these two states is sufficient, and that each state has invitingly loosely defined causes of divorce.

> Popular opinion [it is said in the report] has strongly intimated that Michigan people take advantage of the divorce courts of Illinois; but on consulting the table it is found that of 36,072 divorces granted in Illinois the parties in only 447 cases were married in Michigan. It is sometimes alleged that Canadians seek relief in Illinois; but in only 199 cases out of the 36,072 were the parties married in Canada. These illustrations might be multiplied many times over.

riages of a different state from that of the divorce are, for those respective years, 19.4; 19.4; 19; and 19.08. The uniformity and close correspondence with the movement of population are striking.

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Only 21.4 per cent of the divorces in Illinois were from marriages in other states, and only 17.5 per cent of those in Indiana belong to this class. A comparison of the figures shows that those states which have the largest number of divorces from marriages in other states are generally those having a large immigration of population from other states. To this there are eight or nine exceptions, some of which are suggestive.

The commissioner has ingeniously brought out the reverse side of this table, showing the numbers of those married in a given state who obtained a divorce somewhere else in the United States. Take New York, from whose jurisdiction people have nearly every inducement to go to other states for divorce. The percentage of her divorces from marriages in other states is 9.8 against a population from births in other states of about eight per cent. On the other hand, there were 22,354 divorces in all the United States from marriages celebrated within the state of New York, and of these 9205 were granted outside that state. That is, New York contributes 15.9 per cent of all the 57,679 divorces granted in states different from the place of marriage. But I find that New York contributed in 1880 to the population of the country living outside the state of their birth 12.5 per cent of the total. Here the per cent of divorces granted in other states from marriages in New York is 3.4 per cent more than the contribution of population. Take now Illinois, a state into which people are supposed to go for divorce. The report shows that in Illinois, in twenty years, there were 6924 divorces of parties who had been married somewhere within the United States but outside of Illinois. This is 12 per cent of the total of this class, while Illinois has within her borders but 8.2 per cent of the native population of the country who live in states outside their birthplace. This would go to show that Illinois is, as is generally thought, a state to which people have gone for divorce, while New York is a state from which people have gone. Take Maine, a state that formerly had the reputation of doing a considerable divorce business for non-residents. Only 4.7 per cent of the population of Maine in 1870, and 4.6 per cent in 1880, had been

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born in other states. But 12.9 per cent of her divorced couples had been married in other states. This would indicate pretty clearly that Maine has been a state to which parties have gone to get divorces. On turning to the digest of laws, we find that Maine had an "omnibus clause" prior to 1883, and that a suit could be brought in the state if the parties had cohabited there after marriage.

Another source from which some light was sought regarding migration for divorce was a study of the libels in selected counties to ascertain the number of cases in which notice to the defendant was served by publication. Among 29,665 divorces it seems that 36.9 per cent were cases of notice by publication. The report unfortunately fails to tell us how many of these 29,665 cases were of marriages in or out of the divorcing states. Of course notice is served by publication on many defendants who are residents within the state. The comparison of the place of the divorce with that of the marriage and the movement of population must then remain our best clew to the extent of migration for the immediate purpose of obtaining divorce. And the conclusion must be accepted that while by count of instances the actual numbers who thus avail themselves of our divergent laws are large, yet they really constitute a small percentage of the whole number divorced. While I do not deem it impossible to make a fair approximation to the actual figure from the data of the report itself, with some aid from other sources, I do not care to venture a guess at present. But it can hardly be ten per cent of the divorces of the United States. Migration for divorce, it is clear, is but in small part responsible for the prevalence and increase of divorces. If these are the serious evils, uniformity of law will do little to remedy them. The establishment of uniform laws is not the central point of the problem.

A word on the presence of children among the divorced. In 43.1 per cent of the whole number of decrees "the children formed no part of the question arising under the petition: but to this number should be added the number specifically declaring that they had no children, or 57,524." That is to say, in

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60.6 per cent there were either no children at all or they did not affect the cases in a way to require mention in the libels. The report estimates that alimony is secured in about nine per cent of all the cases. The average number of children, where there were any reported, is 2.07 to each couple. In the last year reported, children appear in 11,365 out of the 25,535 divorces of the year, or in 44.5 per cent. This indicates that the presence of children is coming to stand less and less in the way of divorce.

Space remains for only the briefest remarks. The report shows that the movement of divorce is an international one; that it is of great magnitude, and that its advance is constant and rapid. Though powerfully affected by law, religion and custom, its causes lie deep in our Western civilization,[1] and it must be treated accordingly. Legal and other social reforms must go together. It is evident that American marriage and divorce laws and provisions for accurate knowledge of their working are incomplete, remarkably various and often conflicting, and lacking greatly in system and simplicity. The comparative study of recent European and American law will make this still more evident. It is also made clear by the report that however much a uniform system is needed for the whole country, the lack of it is really the cause of only a very small per cent of our divorces taken together. As a means of lessening the number of divorces in the whole country, apparently a uniform law, such as either Congress or the states acting by themselves would give us, would hardly do much good. It would secure a uniform status for the married and divorced and take away some present incentives to migration for divorce. But

[1] From the official Digest of Statistics of the Japanese Empire, May, 1888, a Japanese friend gives me the data for the following table:

Year.	Marriages.	Divorces.	Ratio of divorces to marriages.
1884	287,842	109,905	1 to 2.62
1885	259,497	113,565	1 to 2.28
1886	315,311	117,964	1 to 2.67

The population of Japan in 1887 was 38,505,832. Marriage and divorce in Japan are generally effected by a simple writing, transferring the woman from the family of her father to that of her husband or the reverse.

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the disturbance to the balance of powers now existing between Congress and the states; the risks of general legislation to meet a specific evil (as, for example, a uniform marriage law to meet the polygamy of Utah); the difficulties in the way of uniformity by agreement of the separate state legislatures; the need of profound study of the social problems involved in any permanent plan of marriage and divorce law; the growing desirability of some degree of international uniformity; and last, though by no means least, the necessity in a democracy of first working out in popular thought some true theory of the solution, — these make the whole problem one of great perplexity and one that demands profound study. I do not see how an intelligent person can now give the special problem of uniformity anything more than a subordinate place in the subject as a whole.

SAMUEL W. DIKE.

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SILVER OR LEGAL TENDER NOTES.

A PROPOSITION has recently been advanced, from a very excellent financial authority, that appeared so plausible in its promise of introducing an improvement into the monetary system of the country as to command attention and approval in many quarters. The growing restlessness of many important interests, under the curious course of financial legislation that has been enforced since 1876, and its effects in modifying the quality or nature of the circulating medium, have led to many efforts to reach a more satisfactory basis. The increasing store of silver, the retirement of the national bank circulation and the occasional flurry caused by an export of gold, are so many factors producing a state of financial uneasiness, mischievous to business interests as well as involving the nation's honor. Since the passage of the silver law in 1878, although a conservative policy has been steadily followed and the action under the law has been maintained at the minimum prescribed, this uneasiness has existed, and has in a measure neutralized the undeniably great and lasting advantages gained by resumption of specie payments in 1879. There are few interests so sensitive to a threatened disaster as those of finance; few interests in which it is more easy to commit errors, apparently of little moment, but entailing great consequences. But it is impossible to measure the loss and derangement of business methods and business morality occasioned by a debasement of the currency.

The proposition made by Mr. St. John, president of the Mercantile national bank of New York, is that Congress be recommended to require the secretary of the Treasury to invest monthly in silver bullion the full authorized sum of $4,000,000, provided that he shall not pay more than ninety-nine and one-half cents for the bullion required by the dollar coin; that in coining the silver the secretary shall concurrently withdraw and cancel the like sum of United States legal tender notes, less the

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sum of national bank notes concurrently surrendered; and that the gold and silver certificates shall be appointed legal tender. In a few words, the object of this proposition is to retire the legal tenders, and to substitute for them standard silver dollars or their representatives, the silver certificates; in this way, he holds, a dangerous element of the currency will be removed and a safer quality substituted, without any increase of the currency. If this claim be perfectly just, it involves an end much to be desired; but the question of the currency has become so involved with relations other than purely economic, that a final decision can safely be reached only by giving these political and social relations their due weight. This being done, the proposition has much in it of danger to commercial and financial interests, and threatens to work, if adopted, a greater injury than benefit.

Let us first consider it from the economic or purely financial standpoint. Any proposition to cancel the legal tenders or "greenbacks" may be regarded as worthy of consideration, as embodying a desirable reform.

The original act of February 25, 1862, authorized the issue of $150,000,000 of legal tender notes, one-third of which were to be in lieu of demand notes issued by an act of 1861. This was in itself a remarkable innovation on the financial policy of the country since 1789, although it was but one step from the treasury note, issued for a short period and bearing interest, to a promissory note, redeemable at no stated time and carrying no interest. The former was rather an investment offered to capitalists; the latter a forced loan, taken in the first instance from those who had dealings with the government, but afterwards, through a legal tender quality conferred upon it, passed from hand to hand in settlement of any debt, public or private, and recognized in every transaction except the payment of interest of the public debt or customs duties and the determination of a contract specifying a particular medium of payment. The needs of the government, occasioned by the war, were the excuse for resorting to such paper; and it was only because of this necessity that the notes were condoned and tolerated.

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While it continued, further issues were made, until the maximum amount outstanding was nearly $450,000,000.

In the meantime some modifications of the manner of issuing may be noticed. The lowest denomination in the notes of the first issue was five dollars, and the notes could be exchanged for six-twenty bonds. These limitations in a measure promised to restrict the use of these notes in small transactions, and to afford the holder an opportunity of obtaining for them an interest-bearing bond, thus providing in a measure against excessive inflation. The demand for small notes, however, became urgent, and Congress determined to repeal the law prohibiting the circulation of bank notes of a less denomination than five dollars in the district of Columbia. Mr. Lincoln vetoed the measure, but urged the expediency of providing a small-note currency that "would save a considerable amount to the Treasury, in interest; would greatly facilitate payments to soldiers and other creditors of small sums; and would furnish to the people a currency as safe as their own government." The suggestion was acted upon, and in July not only were small notes authorized, but notes of the fractional part of a dollar of a limited legal tender quality. Thus in less than six months from the first issue of the "greenback," paper had taken all the forms of coin hitherto in circulation, and nothing remained but to limit the amount issued, which was not done till 1864, when the maximum issue allowed was placed at $400,000,000.

The war being ended, the problem of paying the cost came before Congress. As a preliminary it was publicly and formally announced that "any attempt to repudiate or in any manner to impair or scale the debt should be universally discountenanced and promptly rejected by Congress if proposed."[1] Had it been then suggested to cancel the bonds by paying seventy-five or eighty cents on the dollar, the idea would have been scouted, although the bonds might then have been purchased in the open market at a heavy discount. Three years later, when President Johnson assumed that the holders of United States securities had already received upon their bonds a larger amount than

[1] House of Representatives Resolution, December 5, 1865.

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their original investment, measured by a gold basis, and proposed that the interest payable on these securities should be applied to the principal, the holders to be satisfied with what they had received, both House and Senate passed resolutions in terms of strong indignation condemning the idea. All through this period the purpose of legislation was to provide for the speedy extinction of the debt, while preserving inviolate the public faith. In spite of the depreciation of the currency and a coincident depreciation of other securities issued by the government, it was intended to pay to the creditor the full amount which the government contracted to pay him, and to pay him in coin.

In such measures the "greenback" was included. In 1865 the House pledged its co-operative action to aid the then secretary of the Treasury — Mr. Hugh McCulloch — to contract the currency and resume specie payments at as early a date as the business interests of the country would permit. In 1866 the redemption was begun, and $44,000,000 were called in and cancelled at a rate similar to that proposed by Mr. St. John, $4,000,000 a month; but early in 1868 this contraction was suspended, and in subsequent years re-issues of these cancelled notes were made from time to time, the largest being made in 1873–74 to relieve the stringency in the money market due to the panic, although the power to make such re-issues was a matter of doubt, in and out of Congress. The panic, however, placed the value of the greenback nearly at par, and opened up a currency discussion that has continued to the present day; for "inflation" of the currency became from that time an issue. The legal decision in favor of the legal tender quality of the "greenback"; the re-issue of the cancelled greenbacks, in a time of peace and to meet no public exigency, by the executive branch of government, without color of any law in the matter; the after-effects of the financial crash of 1873; the rise in the coin value of the greenback; the passage of a bill by Congress virtually adding $100,000,000 to the currency, — these were so many measures tending to increase a popular movement for more money (which was, as usual, generally inter-

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preted as meaning also cheap money) that, gathering force, became the grossly exaggerated "inflation" or "greenback" policy.

Fortunately the efforts of the inflationists to flood the country with their nostrum-currency were defeated, but the struggle was long and severe. The passage of the resumption act (1875) was the most important of the measures that determined the question of unlimited issues of an irredeemable paper; but it crystallized the opposition into definite form, and the "greenback party," essentially endorsing Jefferson's position "that bank paper must be suppressed and the circulation restored to the nation, to whom it belongs," became an active political factor. Of the strength of this party at this time there can be no question; the very existence of such a faction, bent upon repealing the resumption law and resolved to depend to an unlimited extent upon greenbacks, was a disturbing influence. The natural course of events destroyed the basis on which the party could best assert its propaganda — the deepening depression of commerce and industry, — until now it is little more than a name. But it has been succeeded by a movement quite as dangerous, because it appeals to the same interested motives as did the greenback party. An excessive coinage of silver is quite as impolitic as an excessive issue of paper; especially when from the beginning the coin pretends to be what it is not — of full value. From an economic standpoint a silver coin, claiming to be of the value of one dollar, but in reality worth but seventy-two cents, is as bad as a piece of paper claiming to be worth one hundred cents, but in reality passing at a discount or depreciation of twenty-eight per cent. In a time of disturbance the silver dollar would be a better possession than mere paper: because at least so much silver bullion is held, which can be disposed of in open market at the current price; while in the case of the greenback there may be nothing but credit behind it (and a much abused credit at that); and that gone, the possessor holds nothing but a bit of paper. To substitute a silver coin for a paper promise might on this ground be regarded as a signal advance towards strengthening

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the currency; and the proposition has been made on more than one occasion. When the silver law of 1878 was framed, it was proposed by Senator Kernan to issue silver dollars in exchange for legal tenders, in sums not less than fifty dollars, the greenbacks so obtained to be cancelled. The object of this proposition, as the senator explained, was to aid resumption by substituting a specie for a paper medium. But the inflation spirit, substituting the word "re-issued" for "cancelled," stultified the promise of the government to "redeem" these notes; and even with this concession, the proposition was rejected,[1] by a vote of fifty-four to ten, as it was recognized that such a measure was a blow aimed at resumption.

A comparison of the qualities of the greenback and silver dollar are, at present, in favor of the former. I say, *at present*, for there are conditions in which any form of circulating medium would be fraught with danger. The greenback is a credit money, a promise to pay based upon the credit of the government; it is no longer a forced loan, irredeemable at the wish of the holder. Of the high credit of the government and its ability to float a much larger quantity of credit paper than is now outstanding, nothing need be said, as the daily quotations of its securities and the monthly reports of its transactions are evidence of its estimation and the resources on which that estimation is based. The legal tenders are evidences of a debt due to the holder from this debtor of unquestioned standing, and may at any time be presented at the Treasury to be exchanged for coin should such an exchange be desired. The original nature of the notes has been continued, so that they are a loan from the people to the government without interest, and contribute an advantage to the government which otherwise would be divided among private interests or individuals. The public have become so accustomed to this form of paper — indeed, the popular prejudice in its favor is so strong — that it is not likely to consent to its retirement merely to favor any special interest, whether it be that of the national banks or the silver supporters, by offering a wider field for their issues. Moreover

[1] February 15, 1878.

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this prejudice has been strengthened by the steady maintenance of the value of the greenback since 1879, which has given it a marked advantage over silver as a medium, and by the final removal of any doubt as to its constitutionality by the last decision of the Supreme Court. If the limit of issue now fixed be maintained, there is little danger of depreciation, or abuse; and though there is much that is anomalous in the laws controlling the issue and management, much that can be condemned on economic and even constitutional grounds, there is also much to commend.

The danger attending a paper credit money is the temptation to unwarrantably increase the issue until depreciation sets in, which may proceed so far as to destroy the value entirely. The experience of the country during the revolutionary war, and in the wild-cat banking era, is to the point, without considering the quite as striking examples offered by similar experiments in France and Austria. During the civil war the depreciation was partial, more severe than occurred in England during the Napoleonic war, and imposing a fearful tax upon the productive resources of the country. There may occur a combination of circumstances, enforced by necessity or imposed by interest, that will lead to a dangerous inflation, to an excessive issue of the legal tenders; but such a combination appears so remote and unlikely that it may be set aside. Congress has the power to issue such notes under any and all circumstances. The highest court in the land has decided such issues to be constitutional, and their propriety to depend solely upon the will of the majority. That here is a power that may prove mischievous is not to be denied; but the "greenback fallacy" has had no standing in that body since 1877, and it is not likely to have, until some period of great and grinding depression again gives vitality to a demand for cheap money and an abundance of it — for money so cheap that silver will seem too good.

It is a trite remark that a dollar is what a dollar does, and its value is determined as much by its utility as money as by its intrinsic worth. Were it possible to coin all the gold and silver on the face of the earth, the sphere of their utility as money

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would not be increased through the inflation, but notably diminished; many pieces would be employed to do the work that is now done by one. The uses of coin are as much limited by natural causes as the uses of any other commodity, and an excess or deficiency of supply is met and corrected as readily as a similar discrepancy between demand and supply in any other commodity. The nearer, therefore, that the quantity of coin is controlled automatically, that is by its natural conditions, the closer we approach to a perfect currency.

Our mint laws that provide for the coinage of silver are directly opposed to these natural conditions; they substitute an artificial arrangement resting upon an artificial foundation. Free and unlimited coinage of silver, at a ratio to gold arbitrarily determined at a point at wide variance from the market ratio, is out of the question, unless it is intended to establish by such an indirect means a single standard of either gold or silver. Having such an artificial ratio, it would be wise to rest the coinage upon the demand for silver coins, upon the actual quantity that the circulating needs of the country call for. Certainly it is unwise to direct that a certain quantity of coin be made each month to be merely stored in vaults.

Were the circulating needs of the nation to be taken as a test, the limit of silver would be found to have been reached nearly ten years ago. That is to say: the manufacture of standard dollars could have ceased in 1880, and the interests of the country would have been in no wise injured. By the end of June, 1880, the total coinage amounted to $63,734,750, of which only about one-fifth were in actual circulation; at the end of June, 1888, the coin in circulation had risen to $55,545,303, and the total coinage to nearly $300,000,000. Of the total coinage effected in the twelve months ending June 30, 1888, less than $40,000 passed out of the Treasury, or only one-tenth of one per cent of the year's coinage. It is impossible to get these pieces into circulation, as the paper certificate is so much more convenient. But the certificate could be as well issued on the value of a bar of silver; thus saving the expense of coinage and offering a more convenient method of storing and of counting.

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On November 1, 1878, the national bank circulation was $319,652,121; a sum nearly equal to that of the outstanding legal tenders, $346,681,016. The coinage of silver dollars had been practised but a few months under the law of 1878, and had not reached a total of $13,400,000, while the gold held by the Treasury and the banks was only about $157,000,000. To secure a paper currency of more than $666,000,000 (for I omit the fractional currency which would make this figure still larger), only $170,000,000 in coin was held — a stock so small that many feared that resumption under these circumstances would be impossible. Circumstances favored the change, and gold poured into the country through trade influences, not only making resumption possible but almost a necessity; for this gold, spreading itself over the country, gave a stimulus to industry and trade that threatened to run the usual exaggerated course of such movements and terminate in a financial crash. During all this time a change in the quality of the circulation was being worked out, and it is instructive to note the last reported results — those at the end of the fiscal year of 1888. The amount of legal tenders remained unchanged, and still was $346,681,016; the national bank circulation had been reduced to $151,702,809 (October, 1888); the paper currency was thus $498,383,825, exclusive of gold and silver certificates. Behind this the Treasury and the national banks held $194,713,000 in gold coin and bullion, and $50,398,000 in silver; a total of $245,111,000. This on its face should show a marked improvement in the quality of the currency; but a slight examination will show the weak point.

The legal tender rests upon the high credit of the government, and also upon a fund (maintained by custom rather than by law) of $100,000,000 in gold, a margin amply safe when judged by the usual criteria of safe banking. The basis of the national bank note is also above question, as it rests upon the credit of the government. We come now to the elastic part of the currency, to that part which can grow almost indefinitely, but cannot contract, and thus threatens to become the principal element of the circulating medium — the silver dollar and the

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certificate issued upon it. So long as the issue of national bank notes offered a reasonable return to the banks, that was the elastic member; for wherever a medium was needed a bank would be established, and when the conditions showed it no longer to be profitable, the bank would wind up its affairs — a simple and safe automatic system. Now the national bank circulation no longer increases but, through the rapid payment of the public debt, the high premium on long-term government bonds and the generally low returns on investments, steadily diminishes. The silver dollar alone increases in quantity, but its value is becoming less each year. In 1878, when the coinage was first begun, its bullion value was eighty-nine cents, and it should have contained 416.66 grains of pure silver (instead of 371.25) to have made it full value. In 1887 its bullion value was seventy-five and eight-tenths cents, the fall being nearly continuous each year, broken only by some temporary and abnormal demands for silver from the East. To be of full bullion value the coin should be increased in weight, so as to contain 489.78 grains of pure silver. The proposition that we are considering therefore involves the substitution of an over valued coin, worth in the markets of the world only about seventy-five cents, or three-fourths of its nominal value, for a convenient paper medium of full value.

There are political reasons that still further militate against the adoption of Mr. St. John's proposition. The history of the first silver legislation — that of 1878 — is too well known to require a detailed statement. It was a compromise effected between the friends of a free and unlimited coinage of silver, and the favorers of a single unit of gold. The limitation in the monthly amount to be coined, a unique chapter in mint legislation, was reached only after a long struggle and after a full discussion of the existing conditions and probable results. The policy of the Treasury has been to coin the minimum quantity allowed by the law; its attitude, without a single exception, has been one of protest against the provisions of the act that require the manufacture of silver coin that cannot be made to circulate, and that is so difficult and costly to store. This atti-

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tude did not imply a hostility to silver, for it was recognized that silver must be a part of the national currency, and its friends have been strong enough to enforce that recognition. But careful and judicious observers of the financial market have noted from time to time the approach of what has seemed to be the displacement of gold by silver, threatened or actual flurries caused by a possible or real export of gold. That such a displacement must occur as soon as the quantity of silver becomes excessive, is taught by economic theory and experience; and it has only been the extraordinary capacity of this country to draw in gold from other countries that has prevented such a change before this. The sensitiveness of the money market here and in foreign financial centres shows how strained the situation has become, and how slight a change may result in precipitating a financial reaction.

It certainly cannot bode well for the future to find a strong movement in favor of an extension of the silver coinage, supported by the strength of a great party, and by the power of the administration. Could we be assured that Mr. St. John's proposition would be accepted in the spirit in which it is offered — that is, that the coinage should continue at the rate of four millions a month until all the legal tenders were retired, and then cease, — we should welcome it as a compromise involving a gain. For the silver men have refused to listen to any compromise looking to a reduction in the coinage, and seem to regard that feature of the Bland law as the all-important item of the measure. That they have the power to hold what they have secured is proved by their action towards Mr. Cleveland, who (ably assisted by Mr. Manning) has proved one of the most persistent of the opponents of the law of 1878. His efforts were in vain; but it was well understood that while he was in the White House any effort to extend the silver policy would be discountenanced by him; and this was a strong moral check upon such action in or out of Congress.

There is every appearance that this policy is to be modified in the direction of greater liberality towards silver. The political influence of such a step in the mining states of the West

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and South is sufficient to justify it in the eyes of the party managers, and thus a strong and not over-scrupulous factor is added to those that favor the extension of silver coining from interest, through ownership of mines, from an honest belief in the possibility and expediency of such a policy, and from a conviction that the country cannot have too much currency. This is a combination that means a power to do mischief. The addition of a new element gives the others the organization they so much needed, and without which they have hitherto proved powerless in action save on the side of opposition. To be able to pass from a position of defence to one of offence and aggression is certainly an indication of strength.

There is little need of specifying here the various indications that have been given of this change of policy. The Republican platform of 1888 was a sad surprise to those who had so long fought for an honest currency under the leadership of this party. The inaugural address of President Harrison contained a repetition of this glance towards a depreciated silver medium. The long delay in the decision on the question of Mexican ores, a delay that was freely attributed to a desire to influence the votes in the elections in the new states and that ended merely in a full affirmation of what had been the Treasury policy in the matter; a noticeable activity in silver agitation in quarters where such a thing had never occurred before; and a combined attack on the "Cleveland anti-silver policy," — these are a few of the many indications that have recently come before the public. It is little to be wondered that the supporters of silver have imbibed a feeling of confidence and have prepared a bill for the coming session providing for the "free and unlimited coinage of silver," and have expectations of success; while the old cry is raised of the "tyranny of the money classes," a tyranny that is defined as dear money and cheap property and labor.

It is reasonable to conclude that this is not a suitable time for urging any extension of the coinage, however strong may be the grounds of expediency on which Mr. St. John bases his proposition. A step down is readily taken, and it is a simple

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matter to depreciate the currency; but the recall of such a move is attended with enormous difficulties and involves great loss and disturbance. The popular view would, of itself, probably lean towards "cheap money"; for the debtor class is large and ever active in seeking relief from its burdens. Besides, there are those who believe that a little excess of money over the demands of trade imparts a stimulus, and may produce a feverish activity that ends in a speculative movement in which gains are expected. This has always been the case; and it has therefore required a continuous (and not always successful) struggle to maintain a high monetary standard or even (what is quite as important) a steady and uniform standard. There is a common belief that a movement looking to a debasement of the currency through an excessive use of silver is impending. Such a movement cannot be countenanced by the men who defeated paper money in 1877, and ought not so much as to be considered by the party who conducted that contest to a successful issue. The honest money policy is now that marked out by Mr. Cleveland, and under it there can be no room for the substitution of silver for legal tender notes.

WORTHINGTON CHAUNCEY FORD.

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MATERIALS FOR ENGLISH LEGAL HISTORY. II.

[Synopsis of preceding article: I. *England before the Norman Conquest.* (1) Dooms. (2) Diplomata. (3) Ecclesiastical Documents. II. *Norman Law.* (1) Exchequer Rolls. (2) Collections of Judgments. (3) Law Books. (4) Diplomata. III. *From the Norman Conquest to Glanvill and the Beginning of Legal Memory.* (1) Laws. (2) Private Collections of Laws and Legal Text-books. (3) Work upon Roman and Canon Law.]

(4) *The diplomata* of this period are numerous and of great interest; they are brief, formal documents, contrasting strongly with the lax and verbose land books of an earlier age; they are for the more part charters of feoffment and grants or confirmations of franchises; they have never been properly collected. Charters of liberties granted to towns should perhaps form a class by themselves, but those coming from this age are not numerous.[1]

(5) *Domesday Book, surveys, public accounts, etc.* By far the greatest monument of Norman government is Domesday Book, the record of the survey of England instituted by the Conqueror and effected by inquests of local jurors; it was completed in the summer of 1086.[2] The form of this document is generally

[1] Few aids would be more grateful to the historian of law or even to the historian of England than a "Codex Diplomaticus Normannici Aevi." As it is, the documents must be sought for in the Monasticon and the cartularies and annals of various religious houses. Some of these have been published in the Rolls series; those of Abingdon, Malmesbury, Gloucester, Ramsey and St. Albans (Mat. Par. Chron. Maj. vol. vi) may be mentioned. A useful selection for this and later times is given by Thomas Madox, Formulare Anglicanum (1702), with good remarks on matters diplomatic; another small selection of early charters has just been edited by J. Horace Round for the Pipe Roll society. Stubbs, Select Charters, gives the municipal charters of this time.

[2] Domesday, or the Exchequer Domesday, as it is sometimes called, was published by royal command in 1783 in two volumes; in 1811 a volume of indexes appeared; in 1816 the work was completed by a supplementary volume containing (*a*) the Exon Domesday, a survey of the south-western counties, the exact relation of which to the Exchequer Domesday is disputed, (*b*) the Inquisitio Eliensis, containing the returns relating to the possessions of the church of Ely, and two later documents, *viz.* (*c*) the Winton Domesday, a survey of Winchester in the time of Henry I, and (*d*) the

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known; it is primarily a fiscal survey; the liability for "geld" in time past, the capacity for paying "geld" in time to come are the chief points which are to be ascertained; it has been well called "a great rate book." Incidentally, however, it gives us a marvellously detailed picture of the legal, social and economic state of England, but a picture which in some respects is not easily interpreted. Of late it has become the centre of a considerable literature;[1] but the historian of law will have to regret that a great deal of labor and ingenuity has been thrown away on the impossible attempt to solve the economic problems without first solving the legal problems.

The other public records of this period consist chiefly of Pipe Rolls, that is, the rolls of the sheriffs' accounts as audited by the Exchequer. Chance has preserved one very ancient roll, now ascribed to 31 Henry I. No other roll is found until 2 Henry II, but thenceforward the series is very continuous.[2] These rolls throw light directly on fiscal machinery and administration, indirectly on numberless points of law. The feudal arrangement of England, the distribution of knights' fees and serjeanties, the obligation of military service and so forth are illustrated by documents of Henry II's reign contained in the Black Book of the Exchequer.[3]

Boldon Book, a survey of the Palatinate of Durham in 1183. Since then (1861–63) the Exchequer Domesday has been "facsimiled" by photozincography; the part relating to each county can be bought separately. The Inquisitio Comitatus Cantabrigiensis, published by N. E. S. A. Hamilton in 1876, contains the returns made by the jurors of Cambridgeshire to the Domesday inquest.

[1] Among the works relating to Domesday may be mentioned the following: Henry Ellis, A General Introduction to Domesday Book (Rec. Com., 2 vols., 1833); Samuel Heywood, A Dissertation upon the Distinctions in Society and Ranks of the People under the Anglo-Saxon Governments (1818); James F. Morgan, England under the Norman Occupation (1858); several works of Robert William Eyton, A Key to Domesday [Dorset], Domesday Studies [Somerset] (2 vols., 1880), Domesday Studies [Stafford] (1881); appendixes to vol. v of Freeman's Norman Conquest; Domesday Studies (1888), a volume of essays by various writers edited by P. Edward Dove (a second volume of this work is promised).

[2] The Pipe Rolls of 31 Henry I, 2, 3, 4 Henry II, 1 Richard I and 3 John (this last from the Chancellor's antigraph) were edited for the Record commissioners by Joseph Hunter. The Pipe Roll society has now taken these documents in hand and published the rolls for 5–12 Henry II.

[3] The Liber Niger Scaccarii was edited by Thomas Hearne (2 vols., 1728).

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(6) *Records of litigation.* Though we have evidence that before the end of Henry II's reign pleas before the king's court were enrolled, we have no extant plea rolls from this age. Accounts of litigation must be sought for in the monastic annals; when found they are too often loose statements of interested parties. However, a good many transcripts of procedural writs have been preserved and these are of the highest value. Before our period is out we begin to get a few "fines" (*i.e.* records of actions brought and compromised, already a common means of conveying land); in four cases the original documents are preserved, in other cases we have copies.[1]

In passing we should note that the chronicles of this age are fruitful fields. Not only do they sometimes contain documents of great importance, laws, ordinances, diplomata, but they also supply many illustrations of the working of law and from time to time give us contemporary criticism of legal measures and legal arrangements.

On the whole we have no reason to complain of the tools provided for us. We cannot say of England, as has been said of France and Germany, that between the period of the folk laws and the period of the law books lies a dark age which has left no legal monument of itself. In particular the *Leges Henrici* serve to mediate between the dooms of Canute and the treatise of Glanvill. The lack is rather of workmen than of implements. But it is to be remembered that it is only of late years that those implements have become generally accessible; also that we have had not only to learn but also to unlearn many things, for the whole of the traditional treatment of the legal history of the Norman time has been vitiated by the great Ingulfine forgery, one of the most splendidly successful frauds

[1] Melville Madison Bigelow, in his Placita Anglo-Normannica (London, 1879), has collected most of what has been discovered touching litigation between 1066 and 1189. For a newly found case, see F. Liebermann, Ungedruckte anglo-normannische Geschichtsquellen (Strassburg, 1879), pp. 251–256; for Norman cases of great value and their connection with English law, Brunner's Entstehung der Schwurgerichte (Berlin, 1871). As to early plea rolls and early fines, reference may be made to the Selden society's Select Pleas of the Crown, vol. 1 (1887), Introduction; since that introduction was written five more copies of fines of Henry II's day have been found in Camb. Univ. Libr. MS. Ee. iii, 60.

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ever perpetrated. A great deal of what went on in the local courts we never shall know; but in Henry II's day the practice and procedure of the king's court become clear to us, and subsequent history has shown that the king's court, becoming in course of time the king's courts, was to have the whole fate of English law in its hands. Towards the end of the period the history of law begins to be, at least in part, a history of professional learning.

There is no very modern work devoted to the legal history of this age as a whole, but it is the subject of Georg Phillips' *Englische Reichs- und Rechtsgeschichte* (1827–28). M. M. Bigelow's *History of Procedure* (London, 1880) has provided for one important department. Of course constitutional history has had a large share of attention, and books have collected round Domesday and round two other points, namely, frankpledge and trial by jury. As to the former of these two points, it will only be necessary to mention Heinrich Marquardsen's *Haft und Bürgschaft bei den Angelsachsen* (Erlangen, 1852), as this will put its reader in the current of the discussion. As to the latter, Brunner's brilliant book, *Entstehung der Schwurgerichte*, has already been named; William Forsyth's *History of Trial by Jury* (1852), and Friedrich August Biener's *Das Englische Geschwornengericht* (Leipzig, 1852) are useful, though chiefly as regards a somewhat later time.

IV. *From the Coronation of Richard I to the Death of Edward I.*

Our sources of information now begin to flow very freely, and so much has already been printed that very probably the historian would find it easier to paint a life-like picture of the thirteenth century than to accomplish the same task for either the fourteenth or the fifteenth. We may arrange the materials under the following heads: (1) laws; (2) judicial records; (3) other public records; (4) law books; (5) law reports; (6) manorial law; (7) municipal and mercantile law.

(1) *Laws.* For reasons which will soon appear, we use the untechnical term "laws" rather than any more precise term. Neither Richard nor John was a legislator; they give us nothing

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that can be called laws except a few ordinances touching weights, measures, money, the prices of victuals. At the end of his reign, however, John was forced to grant the Great Charter (1215); this, if it is a treaty between the various powers of the state, is also an act declaring and amending the law in a great number of particulars: to use terms familiar in our own day, *Magna Carta* is an act for the amendment of the law of real property and for the advancement of justice. The various editions (1215–16–17–25) of the charter being distinguished, we note that it is the charter of 1225 which becomes the *Magna Carta* of subsequent ages and which gets to be generally considered as the first "statute." The term "statute" is one that cannot easily be defined. It comes into use in Edward I's reign; supplanting "provisions," which is characteristic of Henry III's reign; which had supplanted "assize," characteristic of Henry II's, Richard's, John's. Our extant Statute Rolls begin with the statute of Gloucester (1278), and it is very doubtful whether before that date any rolls were set apart for the reception of laws. Some of the earlier laws of our period are to be found on other rolls, Patent, Close, *Coram Rege* Rolls: others are not to be found on any rolls at all, but have been preserved in monastic annals or other private manuscripts.[1]

[1] The laws must be sought primarily in editions of the Statute Book, in particular in the Statutes of the Realm, published for the Record commissioners, the first volume of which work (1810) contains the Charters of Liberties besides the earliest statutes. Stubbs' Select Charters is invaluable for this period, especially as giving the documents relating to the revolutionary time which preceded the Barons' War. Blackstone, The Great Charter (1759), is a learned and useful work. It should be remembered that the text of the earliest statutes is not in all respects very well fixed, *e.g.* it is possible to raise doubts as to the contents of the statute of Merton. There is yet room for work in this quarter. Also it should be noticed that editions of the statutes, including the commissioners' edition, contain Statuta Incerti Temporis. In lawyers' manuscripts these were found interpolated between the Statuta Vetera, which end with Edward II, and the Statuta Nova, which begin with Edward III, like the Apocrypha between the two Testaments; hence they came to be regarded as statutes of the last year of Edward II. Some of them are certainly older, and some of them were certainly never issued by any legislator, but are merely lawyers' notes; in the Year Books their statutory character is disputed; "apocryphal statutes" seems the best name for them. To make a critical edition of them would be a good deed. Perhaps the most interesting is the Prerogativa Regis, apparently some lawyer's notes about the king's prerogatives. Coke's Second Institute is the classical commentary on the early statutes.

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In later times of course it became the settled doctrine that in a "statute" king, lords and commons must have concurred, and that a rule laid down with such concurrence is a "statute." But with our improved knowledge of the history of Parliament we cannot insist on this doctrine when dealing with the thirteenth century. Some of the received "statutes" even of Edward I's day, to say nothing of Henry III's, were issued without any participation by the commons in the legislative act. After the charter of 1225 we have the statute (or provisions) of Merton (1236), the provisions of Westminster (1259), the statute of Marlborough (1267), all of the first importance; and upon these follows the great series of Edward I's statutes, a most remarkable body of reforming laws. Hale's saying about Edward I was very true:

> I think I may safely say, all the ages since his time have not done so much in reference to the orderly settling and establishing of the distributive justice of this kingdom, as he did within a short compass of the thirty-five years of his reign; especially about the first thirteen years thereof.

(2) *Judicial records.* The extant Plea Rolls (rolls of pleadings and judgments) of the king's courts begin in 1194 (6 Richard I), and though we have by no means a complete series of them, we have for the thirteenth century far more than any one is likely to use. These rolls fall into divers classes; there are *Coram Rege* (King's Bench) Rolls, *De Banco* (Common Pleas) Rolls, Exchequer Rolls, Eyre Rolls, Assize Rolls, Gaol Delivery Rolls. The enormous value of these documents to the historian is obvious; they give him a very complete view of all the proceedings of the royal tribunals.[1] The rolls of the thirteenth

[1] We are still behindhand in the work of exploiting the Plea Rolls. In 1811 the Record commissioners published the Placitorum Abbreviatio, a collection of extracts and abstracts extending from Richard I to the death of Edward II, made by Arthur Agard and others in the reign of Elizabeth. Valuable as this book is, it can only be regarded as a stop-gap; our wants are not those of Elizabeth's day. In 1835 Palgrave edited for the commissioners a few of the rolls of Richard I and John under the title Rotuli Curiae Regis; the residue of Richard's rolls are to be published by the Pipe Roll society; the earliest rolls are not the most interesting. The present writer has edited Pleas of the Crown for the County of Gloucester (1884), the criminal part of an Eyre Roll of 1221; Bracton's Note Book (3 vols., 1887), near two thousand cases of Henry III's reign; and, for the Selden society, Select Pleas of the Crown

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century are in one respect better material than those of later times, since they frequently give not merely the judgment but the *ratio decidendi* expressed in brief, neat terms. We also begin to get by the thousand "feet of fines," *i.e.* records of actions brought and compromised as a means of conveying land. The light which these hitherto neglected documents throw upon the history of conveyancing will some day be appreciated.[1]

(3) *Other public records.* The Pipe Rolls continue to give us the sheriffs' accounts; but their importance now becomes much less, since they are eclipsed by far more communicative rolls, namely, the Rolls of Letters Patent and Letters Close, the Fine Rolls and the Charter Rolls. These enable us to study in minute detail the whole of the administrative machinery of the realm; and, owing to the publication of those belonging to John's reign, the governmental work of that age can be very thoroughly understood and illustrated. The Charter Rolls contain copies of the royal grants made to municipalities and to individuals, and thus to some extent they supply the place of a *Codex Diplomaticus.* Then from Edward I's reign we have parliamentary records, a broken series of Rolls of Parliament, of Petitions to Parliament, and Pleas in Parliament.[2]

(4) *Law books.* In England as elsewhere the thirteenth

(vol. i, 1887), a selection of criminal cases from the period 1200–1225. In 1818 the Record commissioners published a large volume of Placita de Quo Warranto, mostly from Edward I's reign, which is full of precious information about feudal justice. But only a beginning has been made; in particular the very valuable Rolls of Exchequer Memoranda must be brought to light; their general character may be gathered from the few extracts printed at the beginning of Maynard's Year Book of Edward II (1678).

[1] Some of the fines of Richard's and John's reigns were edited for the commissioners by Joseph Hunter (2 vols., 1835–44); the residue are to be published by the Pipe Roll society. The fines of a little later date are far more valuable and show elaborate family settlements; but they are unprinted.

[2] Published for the Record commissioners are the Close Rolls, 1204–1224, edited by T. D. Hardy (2 vols., 1833–44); the Patent Rolls, 1201–1216, by Hardy, with a learned Introduction (1 vol., 1835); the Oblate and Fine Rolls of John's reign, by Hardy (1 vol., 1835); Excerpts from the Fine Rolls, 1216–1272, by Charles Roberts (2 vols., 1835–36); the Charter Rolls, 1199–1216, by Hardy (1 vol., 1837). The Rolls of Parliament (6 vols. and Index) were officially published in the last century, but at least so far as the first period (Edward I, II, III) is concerned, this edition leaves much to be desired. Many materials for the illustration of parliamentary business have since come to light, and vast numbers of early Petitions to Parliament still remain unprinted. Of the Hundred Rolls hereafter.

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century might be called "the period of the law books"; that is to say, the historian of this period will naturally reckon text-books, notably one text-book, as among the very best of his materials.

(*a*) Bracton's *Tractatus* (or *Summa*) *de Legibus et Consuetudinibus Angliae* is by far the greatest of our mediæval law books. It seems to be the work of Henry of Bratton, who for many years was a judge of the king's court and who died in 1268. It seems also to be an unfinished book and to have been composed chiefly between the years 1250 and 1256. It covers the greater part of the field of law. In laying out his scheme the author has made great use of the works of Azo, a Bolognese civilian, and thence he has taken many of the generalities of law; he may also have made some study of the Roman books at first hand; but he was no mere theorist; at every point he appeals to the rolls of the king's court, especially to the rolls of two judges already dead, Martin of Pateshull and William of Raleigh; his law is English case law systematized by the aid of methods and principles which have been learnt from the civilians. A *Note Book* full of cases extracted from the rolls has recently been discovered, and there is some reason for thinking that it was made by or for Bracton and used by him in the composition of his treatise.[1]

(*b*) "Fleta" is the work of an anonymous author, seemingly compiled about 1290. It gets its name from a preface which

[1] An edition of Bracton was published in 1569 and reprinted in 1640; a new edition has been given in the Rolls series by Travers Twiss (6 vols, 1878–83); the editor however was hardly alive to the difficulty of his task and failed to observe that the very numerous MSS. present the work in several different stages of composition. A more adequate edition is much wanted. It should show what Bracton borrowed from Azo, and also, when this is important, what he declined to borrow from Azo; it should give all the cases cited by Bracton which are not already printed in the Note Book, or such of them as can yet be found on the rolls; it should settle the pedigree of the MSS., distinguish the author's original work from his afterthoughts and from the glosses by later hands, some of which glosses (never yet printed) are of great interest. Five years of hard work might give us a really good edition. The Note Book alluded to above was brought to light by Paul Vinogradoff in 1884 and has since been published (1887).

Bracton's relation to Azo is the subject of an excellent tract by Karl Güterbock, Henricus de Bracton und sein Verhältniss zum römischen Rechte (Berlin, 1862), translated by Brinton Coxe (Philadelphia, 1866).

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says that this book may well be called Fleta since it was written "in Fleta," *i.e.* in the Fleet gaol. In substance it is an edition of Bracton much abridged and "brought up to date" by references to the earlier statutes of Edward I. It has however some things that are not in Bracton, notably an account of the manorial organization; this the writer seems to have obtained from what we may call "the Walter of Henley literature," to which reference will be made below.

(*c*) Bracton and Fleta are Latin books: "Britton" is our first French text-book. It seems to have been written about 1290. The writer made great use of Bracton and perhaps he used Fleta also; but he has better claim to be treated as an original author than has the maker of Fleta. He arranges Bracton's material according to a new plan, and puts his whole book into the king's mouth, so that all the law in it appears as the king's command. Who he was we do not know; he has been identified with John le Breton, a royal judge and bishop of Hereford; but the book, as we have it, mentions statutes passed after the bishop's death. To judge by the number of existing manuscripts, Bracton and Britton both became very popular, while Fleta had no success.[1]

(*d*) Selden had a manuscript purporting to contain Bracton's treatise abridged by Gilbert Thornton in the twentieth year of Edward I; Thornton was chief justice. Selden's manuscript is not forthcoming and he did not know of any other like it. Possibly, however, Thornton's abridgement is represented by some of the existing manuscripts which give abbreviated versions of Bracton's book.

(*e*) Works of minor importance are two little treatises on procedure by Ralph Hengham, known respectively as *Hengham Magna* and *Hengham Parva;* a small French tract of uncertain

[1] Fleta was printed in 1647 and again in 1685; these editions are faulty but are accompanied by a learned dissertation coming from Selden. Part of Fleta was edited anonymously by Sir Thomas Clark in 1735. An admirable edition of Britton has been published by Francis Morgan Nichols (2 vols. Oxford, 1865). Britton was first printed by Redman (without date) and was again printed in 1640; a translation of part of it was published in 1762 by Robert Kelham. Britton and Fleta are also to be found in Houard's Traités sur les Coutumes Anglo-Normandes.

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date, also on procedure, known from its first words as *Fet assavoir;* and various little tracts found in manuscripts under such titles as *Summa ad cassandum omnimoda brevia, Summa quae vocatur Officium Justiciariorum, Summa quae vocatur Cadit Assisa, Placita placitata,* and the like. They are of an intensely practical character, but deserve to be collected.[1]

(*f*) To Edward II's reign, or perhaps to the end of his father's, we must attribute the interesting but dangerous *Mirror of Justices* of Andrew Horne, fishmonger and town clerk of London.[2] It is the work of one profoundly dissatisfied with the administration of the law by the king's judges. As against this he appeals to myths and legends about the law of King Alfred's day and the like, some of which myths and legends were perhaps traditional, while others may have been deliberately concocted. Intelligently read it is very instructive; but the intelligent reader will often infer that the law is exactly the opposite of what the writer represents it to be. It has done much harm to the cause of legal history; it imposed upon Coke and even in the present century has been treated as contemporary evidence of Anglo-Saxon law.

(*g*) There is hardly any book more urgently needed by the historian of English law than one which should trace the gradual growth of the body of original writs, *i.e.* of the writs whereby actions were begun; such writs were the very skeleton of our mediæval *corpus juris.* The official *Registrum Omnium Brevium* as printed in the sixteenth century (1531, 1553, 1595, 1687) is obviously a collection that has been slowly put together. It is believed that extant manuscripts still offer a large supply of materials capable of illustrating the process of its growth. Some of the manuscript collections of writs go back to Henry III's reign, and occasionally have notes naming the inventors of new writs.[3] Here is a field in which excellent work might be done.

[1] "Fet assavoir" appears at the end of the editions of Fleta. The two Henghams appear in Selden's edition of Fortescue's De Laudibus (1616). Some of the minor tracts seem never to have been printed.

[2] A poor version of the French text of the Mirror was issued in 1642, an English translation of it by William Hughes in 1642, 1768 and 1840. A critical edition of this curious book would be of great value.

[3] Thus a Cambridge MS. Kk, v, 33, gives a very early Registrum Brevium in which

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(5) *Law reports.* Just at the end of the thirteenth century there appear books of a new kind, books whose successors are to play a very large part in the legal history of all subsequent ages; we have a few Year Books of Edward I's reign.[1] These are reports in French by anonymous writers of the discussions which took place in court between judges and counsel over cases of interest; whether they bore any official sanction we do not know. They are of special value as showing the development of legal conceptions, which is better displayed in the dialectic process than in the formal Latin record which gives the pleadings and judgment in their final form; we learn what arguments were used and also what arguments had to be abandoned. But for the period now in question we can only give the Year Books a secondary place among our materials.

(6) *Manorial law.* Of late years our horizon has been enormously extended by the revelation of vast quantities of documents illustrative of manorial law and custom, a department of law which has hitherto been much neglected, but which is of the very highest interest to all students of economic and social history.

(*a*) In the first place we have numerous "extents" of manors, *i.e.* descriptions which give us the number and names of the tenants, the size of their holdings, the legal character of their tenure and the kind and amount of their service; the "extent" is a statement of all these things made by a jury of tenants. Such extents are found in the monastic cartularies and registers. Among these we may mention the Boldon Book, which is an account of the palatinate of Durham, the Glastonbury Inquisitions, the Cartulary of Burton Abbey, the Domesday of St.

we may read how a number of writs were invented by William Raleigh. The earliest Register known to me is in Mus. Brit. MS. Cotton. Julius D. II.

[1] Happily the Year Books of Edward I remained unprinted until very lately; the consequence is that we have a good edition of them. Between 1863 and 1879 Alfred J. Horwood edited for the Rolls series five volumes containing cases from the years 20, 21, 22, 30, 31, 32, 33, 35 Edw. I. Before his death he had begun work on the Year Books of a later age, and the inference might be drawn that he was unable to find any more reports of Edward I's reign. But he seems to have nowhere stated that this was so, and a cursory inspection of the manuscripts induces the belief that they have not yet been exhausted.

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Paul's, the Register of Worcester Priory, the Cartularies of Gloucester, Ramsey, and Battle. A few of those mentioned at the head of our list take us back into the twelfth century. There are still several cartularies which ought to be printed. The "Hundred Rolls" compiled in Edward I's reign give us the results of a great inquest prosecuted by royal authority into "the franchises," *i.e.* the jurisdictional and other regalia which were in the hands of subjects; we thus obtain an excellent picture of seignorial justice. But for certain counties and parts of counties these Hundred Rolls give us far more, namely, full "extents" of all manors. They thus serve to supplement and correct the notions which we might form if we studied only the ecclesiastical manors as displayed in the cartularies.[1]

(*b*) Almost nothing has yet been done towards the publication of a class of documents which are quite as important as the "extents," namely, the earliest rolls of the manorial and other local courts. We have a few older than 1250, a considerable number older than 1300.[2] They show the manorial system in full play, illustrate all its workings and throw light on many points of legal history which are not explained by the records of more exalted courts.[3]

[1] The Boldon Book was published as an appendix to the official edition of Domesday, vol. iv, and again by the Surtees society; the Glastonbury Inquisitions were printed for the Roxburghe club; an abstract of the Burton Cartulary for the Salt society; the Black Book of Peterborough for the Camden society at the end of the Chronicon Petroburgense; the Domesday of St. Paul's and the Worcester Register (both with valuable introductions by William Hale Hale) and the Battle Cartulary for the Camden society; the Gloucester and Ramsey Cartularies are in the Rolls series. The Hundred Rolls were published by the Record commissioners (2 vols., 1812–18). The publications of the Camden society are often in the market.

[2] The Selden society's volume for 1888, Select Pleas in Manorial and other Seignorial Courts, gives extracts from some typical rolls of the thirteenth century and may serve to stimulate a desire for further information.

[3] There are several little treatises on the practice of manorial courts. Some of these in their final shape belong to the next period and are represented by the Modus tenendi Curiam Baronis, two editions by R. Pynson (n.d. — 1516–20?); Modus tenendi unum Hundredum, Redman (1539); Modus tenendi Curiam Baronis, Berthelet (1544); The Maner of kepynge a Courte Baron, Elisabeth Pykeringe (1542?); The Maner of kepynge a Court Baron, Robert Toye (1546). But beside these there is a quite early set of precedents which seems never to have been printed. It generally begins "Ici poet home trover suffysaument . . . tut le cours de court de baron." It is found in several MSS., *e.g.* Mus. Brit. Egerton, 656; Add. 5762; Lands, 467.

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(*c*) Little known to the world, there is a small but complicated literature of tracts on "husbandry" and the management of manors. In whole or in part it is often associated with the name of a certain "Walter of Henley." The author of Fleta has made use of it in his well-known chapter on the manorial system. Further investigation will perhaps distinguish between two or three tracts that are intertwined in the manuscripts and presented in varying forms. An edition of all or some of these tracts has been projected. They bear directly rather on agricultural and economic than on legal history; but the historian of manorial law cannot afford to neglect them.[1]

This department of mediæval law, concerning as it does the great mass of the population, is beginning to attract the attention that it deserves. The traditional learning of lawyers about the manorial system went back only to comparatively recent times and their speculations about earlier ages had been meagre and fruitless. A new vista was opened by Erwin Nasse's *Ueber die mittelalterliche Feldgemeinschaft in England* (Bonn, 1869), which was translated into English by H. A. Ouvry (1871). H. S. Maine's *Lectures on Village Communities in the East and West* (1876) drew the attention of Englishmen to the work that had been done in Germany. Frederic Seebohm's *English Village Community* (1883) came into sharp conflict with what were coming to be accepted doctrines and must lead to yet further researches. In 1887 Paul Vinogradoff published at St. Petersburg a Russian treatise in which much use was made of our manorial extents and rolls; a larger work in English by

[1] One of these tracts (in an English version) got printed very early without date or printer's name. "Boke of husbandry. Here begy*n*neth a treatyse of husbandry whiche mayster Groshede so*m*tyme bysshop of Lyncoln made and translated it out of Frensshe into Englysshe . . . The 1. chapitre. The fader in his olde age sayth to his sone lyve wysely. . . . Here endeth the boke of husbandry and of plantynge and graffynge of trees and vines." One of the tracts was published by Louis Lacour; Traité inédit d'économie rurale composé en Angleterre, Paris, 1856. These seem at present the only printed representatives of this "Walter of Henley literature"; but it appears in many manuscripts. For information on this subject I am indebted to my friend Dr. William Cunningham, the author of The Growth of English Industry and Commerce, who proposes, I believe, to reprint in the second edition of his book the rare tract ascribed to Bishop Grostete of Lincoln. Some other of these tracts are, I hear, to be edited for the Royal Historical society.

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the same hand is expected. This of course is a department in which legal and economic history meet; and it has become clear that the historian of law must realize the economic meaning of legal rules while the historical school of economists must study mediæval law.

(7) *Municipal and mercantile law.* The growth of municipal institutions, the development of guilds and corporations, are now recognized topics of "constitutional history." But a great deal remains to be done towards the publication of documents illustrating the laws and customs administered in the municipal courts. In particular there is much to be discovered about "the law merchant." Before the end of the thirteenth century the idea had been formed of a *lex mercatoria*, to be administered between merchants in mercantile affairs, which differed in some respects from the common law. Throughout the middle ages the merchants had special tribunals to go to, and consequently very few of their affairs are noticed in the Year Books. Whether very much of this law merchant can be recovered may be doubtful, but until the archives of our cities and boroughs have been thoroughly explored by some one who knows what to look for, we shall do well to believe that something may yet be learned.[1]

V. *From Edward III to Henry VIII.*

About the remainder of the middle ages we must speak more briefly. On the whole the law has no longer to be sought in out of the way or but newly accessible sources; it may be found in books which lawyers have long had by them and regarded not merely as evidence of old law but as authority, namely the

[1] Thomas Madox's Firma Burgi (1726) is a vast mine of facts, and many will be found in The History of Boroughs, by Henry Alworth Mereweather and Archibald John Stephens (3 vols., 1835). For London, Henry Thomas Riley's Monumenta Gildhallae Londoniensis (Rolls series, 3 vols. in 4, 1859–62) is the great book. A custumal of Ipswich is printed by Travers Twiss in vol. ii of the Black Book of the Admiralty (Rolls series, 1873). A considerable number of other municipal custumals belonging to this and the next period are known to exist in manuscript. A little about the law merchant will be found in the Selden society's vol. ii, where some pleas in the court of the Fair of St. Ives are given. A great deal about the legal treatment of merchants and mercantile affairs is collected by Georg Schanz, Englische Handelspolitik (2 vols., Leipzig, 1881).

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Statute Book, the Year Books and the very few text-books which this age presents. It would be a great mistake, however, to suppose that these sources should be exclusively used or that they are in the state in which they ought to be.

After Edward the Third's accession we can insist on a strict definition of a statute. The more important laws of a general character are placed on the Statute Roll and about their text there can seldom be any dispute; we have a good official edition of them. But the Parliament Rolls, an unfortunately broken series, also should be studied, as they often show the motives of the legislators and also contain some of those acts of Parliament which were not thought of sufficient general and permanent importance to be engrossed on the Statute Roll; a great deal that concerns trade and agriculture and villainage and the working of the inferior organs of the constitution, in particular the new magistracy, the justices of the peace, must be sought rather in the Parliament Rolls than among the collections of statutes. Again, most of the other series of non-judicial rolls mentioned above are continued; and though they are not of such priceless value for this as for former periods, they should certainly not be neglected by any one who wishes to make real to himself and others the working of our public law. A great deal of that law never comes into the pages of the Year Books and for that reason has remained unknown to us.

We turn to the law reports. A series of Year Books extends from Edward II to Henry VIII, from 1307 to 1535. They got into print piecemeal at various times; the most comprehensive edition is one published in ten volumes, 1678–80. This edition has about as many faults as an edition can well have; it teems with gross and perplexing blunders. Happily it is not complete, and we have thus been enabled to contrast a good with a bad edition. It leaves a gap between the tenth and the seventeenth years of Edward III. This gap is being gradually filled up in the Rolls series by L. O. Pike, who has already given the books for the years 11–14 Edward III; but there are several other considerable gaps to be filled, one for instance between the thirtieth and thirty-eighth years of the same reign, another repre-

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senting the whole reign of Richard II. Henry VIII's long reign is scurvily treated, and though we begin now to get a little help from reporters whose names are known, from Dyer and others, still it is true that we have singularly few printed memorials of the law of this important time. An edition of all the Year Books similar to that which we now have in the Rolls series for a few lucky years of Edward III would be an inestimable gain, not merely to the historian of law but to the historian of the English people.

One of the many excellent features of these newly published Year Books of Edward III's reign consists of further information about the cases there reported, which information has been obtained from the Plea Rolls. Often the report of a case in the Year Books is but partially intelligible to modern readers until they are told what are the pleadings and the judgment formally recorded on the official roll of the court. The Plea Rolls are extant. To print even a few rolls of the fourteenth or fifteenth century would be a heavy task, so copious is the flow of litigation, so lengthy have the pleadings by this time become.[1] Still, in that new edition of the Year Books which is urgently needed, a brief statement of the recorded pleadings and judgment ought to be frequently given. But this is not the only use that should be made of the rolls. The Year Books, invaluable though they be (or would be were they made legible), are far from giving us a complete view even of the litigation of the period, to say nothing of a complete view of its law. They are essentially books made by lawyers for lawyers, and consequently they put prominently before us only those parts of the law which were of immediate interest to the practitioners of the time; an exaggerated emphasis is thus laid on minute points of pleading and practice, while some of the weightiest matters of the law are treated as obvious and therefore fall into the background. If anything like a thorough history of "the forms of action" is to be written, the Plea Rolls as well as the Year Books must be examined. The work of turning over roll after roll will be long

[1] It is said that the rolls of the Court of Common Pleas for Henry VIII's reign consist of 102,566 skins of parchment.

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and tedious, but greater feats of industry have been performed with far less gain in prospect. To give one example of the use of the Plea Rolls, let us recall Darnel's Case, the famous case of Charles I's day, about the power of the king and the lords of the council to commit to prison. The question what were the courts to do with a man so committed could not be answered out of the Year Books, it had to be answered out of the Plea Rolls. These rolls contain an exhaustive history of the writ of *habeas corpus*, the Year Books have little about it, for cases about "misnomer" and the like had been far more interesting to lawyers than "the liberty of the subject." And so it is to be suspected that the new principles of private law which appear in the Year Books of Edward IV — the rise of the action of assumpsit, the doctrine of consideration, the protection of copyholders, the conversion of the action of ejectment into a means of trying title to lands, the destruction of estates tail by fictitious recoveries — that all these and many other matters of elementary importance might be fully illustrated from the Plea Rolls, whereas the Year Books give us but dark hints and unsolved riddles.

The manor becomes steadily of less importance during this period; but that is no reason why the manorial rolls, of which we have now an ample supply, should be neglected; but neglected they have hitherto been. The historian should take account not only of growth but of decay also, and the records of this time should give the most welcome evidence as to the effect of great social catastrophes, the black death, the peasants' revolt, the dissolution of the monasteries, and also as to the formation of what comes to be known as copyhold tenure. And again, turning from country to town, we shall not believe that the development of the law merchant has left no traces of itself until some one has given a few years to hunting for them.

Still more important, at least more exciting, is the history of the jurisdiction of the Council and of the new courts which arise out of it, the Court of Star Chamber, the Court of Chancery. Much has been recovered, but assuredly much more can be recovered. There are large quantities of Chancery proceedings to

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be examined; and it is impossible to believe that we shall always be left in our present state of utter ignorance as to the sources of that equitable jurisprudence which in course of time transfigured our English law, be left guessing whether the chancellors trusted to natural reason, or borrowed from Roman law, or merely developed principles of old English law which had got shut out from the courts of common law by the rigors of the system of writs.[1]

With a few, and these late exceptions, the text-books of the time are of little value; with the thirteenth century died the impulse to explain the law as a reasonable system and give it an artistic shape. Still that is no reason why such books as there are should be left in their present dateless, ill-printed or even unprinted condition; the *Old Tenures*, the *Old Natura Brevium*, the *Novae Narrationes* want editors; and towards the end of our period we get some "readings" which should be published, such as Marrow's *Reading on Justices of the Peace*, a work which Fitzherbert and Lambard treated as of high authority. Littleton's *Tenures*, which marks the revival of legal and literary endeavor under Edward IV, has had enough done for it by its great commentator, in some respects more than enough, for the historian will have to warn himself against seeing Coke in Littleton.[2] Needless to say it is a very good book; and the

[1] The Proceedings and Ordinances of the Privy Council from 1386 to 1542 were edited for the Record commissioners by Nicholas Harris Nicolas (7 vols., 1834–37). There are two well-known monographs, Francis Palgrave, Essay upon the Original Authority of the King's Council (1834) and A. V. Dicey, Essay on the Privy Council (2d ed., 1887). The Calendars of the Proceedings in Chancery in the Reign of Elizabeth, as published by the commissioners (3 vols., 1827–32), contain some specimens of earlier proceedings beginning in the reign of Richard II. A calendar of proceedings in Chancery beginning with Richard's reign is in the press. Spence's Equitable Jurisdiction, mentioned above, affords much that is of historical value. But quite new ground was broken by L. O. Pike's essay on Common Law and Conscience in the Ancient Court of Chancery, *Law Quarterly Review*, I, 443, and by O. W. Holmes' daring paper on Early English Equity, *ibid.* 162. The suggestions thus made must be followed up; and it is believed that the materials for a history of the beginnings of equity are to be found at the Record office in great abundance. It is high time that they should be used. As to the Star Chamber, considering how important, how picturesque a part it played in English history, it is surprising that no very serious attempt should have been made to master the great mass of documents relating to it.

[2] Early editions of Littleton's Tenures are numerous and some of them are precious;

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last parts of it, now little read, are a most curious monument of the dying middle ages. They only become really intelligible and lifelike in the light of the Paston Letters and similar evidence, a light which reveals the marvellous environment of violence, fraud and chicane in which an English gentleman lived. Under Henry VIII, Fitzherbert begins the work of summing up our mediæval law in his *Abridgement* and his *New Natura Brevium*. Sir John Fortescue's works give excellent illustrations of several legal institutions, notably of trial by jury, though as a whole they are rather concerned with politics than with law.[1]

Here I must stop, without of course intending to suggest that history stops here. The historian of modern law — the historian, let us say, who should choose as his starting point the reign of Elizabeth — would have before him an enormously difficult task. The difficulty would lie not in a dearth but in a superabundance of materials. To trace the development of the leading doctrines at once faithfully and artistically would require not only vast learning but consummate skill, such a combination of powers as is allowed to but few men in a century. But the result might be one of the most instructive and most readable books ever written, one of the great books of the world. However, no one who feels the impulse to undertake such a work will need to be told how to set about it or whither to look for his materials. It is somewhat otherwise as regards the middle ages; those who have seen a little of our records printed and unprinted may be able to give a few acceptable hints to those who have seen less, and it is with some vague hope that the above notes may be of service to

an edition by T. E. Tomlins, 1841, is probably the best. Any one who has heard of Coke upon Littleton has probably also heard of the fine edition of that book made by Francis Hargrave and Charles Butler; their notes, especially Butler's, are of real value even for the mediæval period. The Novae Narrationes were printed by Pynson without date and were published again in 1561; both the Old Tenures and the Old Natura Brevium were printed by Pynson.

[1] Fortescue's most famous work De Laudibus Legum Angliae was edited with important notes by Selden in 1616, and has since been edited by A. Amos. His writings will be found in the first volume of a luxurious book printed for private circulation by Lord Clermont, Sir John Fortescue and his Descendants. His tract on The Governance of England has been beautifully edited with an elaborate apparatus by Charles Plummer (1885).

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beginners that they have been strung together; may they soon become antiquated, even if they are not so already! They should at least convey the impression that there is a great deal to be done for English mediæval law; much of it can only be done in England, for we have got the documents here; but there is no reason why it should not be done by Americans. We have piles, stacks, cartloads of documents waiting to be read — will some one come over into England and help us?[1]

F. W. MAITLAND.

[1] As I have reason to believe that the difficulty of reading legal MSS. is greatly exaggerated by those who have made no experiment, I may be allowed to say that any one who knows some law and some Latin will find that the difficulty disappears in a few weeks. Of course I am not denying that from time to time problems may arise which only an experienced or perhaps a specially gifted eye can solve, but as a general rule our legal records from the beginning of the thirteenth century downwards are written with mechanical regularity; during the thirteenth century the writing is often beautiful; usually if one cannot read them this is because one does not know law enough, not because the characters are ill-formed or obscure.

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LOCAL GOVERNMENT IN PRUSSIA. I.

PRINCE BISMARCK'S influence on the foreign policy of Germany has been so great and the military triumphs of his administration have been so startling as to have chiefly attracted and almost absorbed the attention of foreign observers of German affairs. Little is known by the ordinary student regarding Bismarck's policy in the internal affairs of Prussia; and yet, notwithstanding his enormous labors in other directions, his ceaseless energy has found wide and fruitful field for action in the undramatic details of local government. He has left as lasting an impression on the organization of the Prussian administrative system and on Prussian administrative law as on the map of Europe; and Prussia is called upon to thank him, notwithstanding his reputed love of bureaucratic government and lack of sympathy with popular autonomy, for a greater share of local independence than is granted to most German or even to most European states. Amid the stirring events of the last quarter of a century there has been completed under his direction one of the most notable administrative reforms that the world has ever been called upon to witness — a reform which has in view the social regeneration of the Prussian state, the realization of the social aims of the French revolution, and the formation of a system of administration which shall make it difficult for any one class of society to employ its powers of government for purely selfish ends. This reform has been remarkable not only for the loftiness of its purpose, but also for the fact that, though brought to a successful completion by the foremost political figure of the present time, it does not owe its inception to him or to the influence of contemporaneous political thought, but was sketched out three-quarters of a century ago by one of the greatest of Prussian statesmen — Baron Stein. The reform initiated by Stein languished for many years, but the impulse he gave was great enough finally

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to overcome all obstacles and to cause the incorporation of his ideas into the Prussian administrative system. Stein's ideas of government were not evolved out of his inner consciousness. A close student of the law of other countries, he was able to formulate a plan of administration that was founded on experience. His ideas were obtained from a careful consideration of the great French revolution and from a complete knowledge and understanding of the political and social conditions which had brought it about and of the results by which it was attended.

In order to understand the great reform which owes its name as well as its origin to Stein, it will be necessary to consider briefly the condition of Prussia when he came into office. Not only is such a consideration necessary to understand what Stein did for Prussia; it will also be interesting to the general student of political institutions, since the internal history of Prussia is a most striking illustration of the influence which an administrative system may exert on the people of a country. No other bit of history brings out so clearly the presence of that everlasting conflict between social classes which it is the duty of the administrative system to bring to an end; no other reform shows us so well how to reconcile apparently irreconcilable social interests.

I. *History of Prussian Local Government since* 1807.

I have chosen the year 1807 as the starting point in this historical sketch, because it was then that a really modern Prussia came into being. The Prussia of previous times was feudal rather than modern; and in 1807 feudal Prussia came to a humiliating end, and modern Prussia began to lay the foundations of that extraordinary career of prosperity which has brought her from comparative obscurity to the foremost place in modern Europe.

In 1806 the battles of Jena and Auerstadt brought the Hohenzollerns to the feet of the conqueror of Europe. After the news of Napoleon's victories had spread over the country, army after army laid down its arms without striking a blow for the

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fatherland, and one after another the strong places of Prussia opened their gates to the forces of the invader. All hopes of Russian aid were blasted by the French victories of Eylau and Friedland, soon followed by the peace of Tilsit. Seldom has it fallen to the lot of any nation to suffer such humiliation as did Prussia by this famous treaty. Half of her territory was taken from her, and what remained was little more than a subject part of the great French empire, then at almost the height of its power. Such was the end of feudal Prussia. Her collapse was so sudden and so complete as to prove beyond a peradventure that the magnificent fabric reared with so much pains by the great Prussian kings rested on most insecure foundations. The victories of the French were not really so overwhelming as to offer sufficient explanation for the universal panic of her people. The resources of Prussia were not so utterly exhausted as to make all further resistance hopeless. The causes of her fall are to be found in the moral deficiencies of her citizens: their insensibility to loyal feeling and their deafness to the call of patriotic duty.[1] These deficiencies were in great part the result of unsound social and political conditions. The Prussian administrative system was cumbrous and inefficient, and the social relations of the people were such as almost to preclude the possibility of any harmony of action between the various classes.

The administrative system was one which had come down from the time of Frederick William I. It was bureaucratic to the last degree, entrusting the management of almost all matters of importance to appointed officers who had adopted the administration of government as a profession and who acted under a complete central control. Only the influential classes of the people — *i.e.* the large landholders, the nobility — had any powers, and their powers were limited to purely local matters and were exercised under the never-ceasing and all-

[1] Typical of the time was the celebrated proclamation issued by the governor of Berlin after the battle of Jena: "The King has lost a battle. The first duty of the citizen is to keep quiet." ("Der König hat eine Bataille verloren. Die erste Bürgerpflicht ist Ruhe.") Bornhak, Geschichte des preussischen Verwaltungsrechts, Bd. III, S. 3.

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embracing supervision of the bureaucracy. Unimportant as this measure of self-government was, it had influence for evil rather than for good, since so much of the feudal régime existed in the localities that local self-government in the interest of any but the great landholders was impossible. Not only was the government bureaucratic in the extreme, but the organization of the administrative system was itself most faulty. Originally in the hands of Frederick William I. a most effective instrument of administration, it had degenerated, like most bureaucratic systems, in the hands of less able men. Too centralized to act in the interest of the localities when not wisely guided it was also too closely wedded to routine to adapt itself to changing conditions and too much given up to red tape to act with any promptness.[1] And this faulty government had much more to do than is now thrown on any administrative system; for the making of laws as well as their administration and the decision of many matters of a judicial character were in the hands of the official classes. All legislation consisted of royal decrees issued by the king, subject to no control save that exercised over him by his official advisers; and the public law contained no clear distinction between the judicial and the administrative or executive powers. The result of such conditions was that the people participated hardly at all in the government and administration of the country and therefore not only lost all political capacity but also came to regard the government either with indifference or with absolute hatred.

Finally, while the governmental and administrative system was so faulty and had such an evil influence, the social conditions of the Prussian people were such as to favor one class at the expense of the others and at the same time to impoverish the country as a whole. The distinctions of class were so fixed, as a result, among other things, of the Frederician Code, as almost to divide the people into castes. The laboring classes were crushed down under enormous burdens by the nobility in the rural districts and by the rich bourgeoisie in the cities; and artificial barriers placed about the freedom of commerce

[1] Meier, Die Reform der Verwaltungsorganization, 1. Abschnitt.

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and labor in the interest of the richer classes prevented all classes alike from making the best use of the powers they possessed.

Such were the internal weaknesses that made Prussia an easy prey to Napoleon. But while its humiliation was great, its regeneration was near at hand. Baron Stein was called to the head of the administration in 1807, and during the one year of service from which he was finally driven by the influence of Napoleon he was the director of the policy of Prussia and may well be regarded as the founder of the Prussia of to-day. During this short time of service he formulated and published his general plan of government;[1] and, although unable to secure the adoption of this plan in the entire country, he left to his successors a model to follow in his great municipal corporations act of 1808. Besides this he was able to abolish serfdom, to make it possible for those not of noble blood to acquire and hold land[2] and to introduce great and needful changes in the administrative system itself.[3] His actual work is not therefore to be despised and can be regarded as small in amount only when compared with his aims.

Stein's concrete model of administration was the English system as at that time existing. It was only with considerable modifications, however, that he intended to introduce it. Thus he decided to retain, in a modified form, the existing Prussian bureaucracy, in order to prevent the noble landholding classes from selfishly abusing the powers he contemplated giving them[4] and in order to carry out the social reforms which he had

[1] What Stein's ideas of government were may be seen from that famous document which the Germans have christened Stein's "political testament." This document was the circular which Stein sent to the officers of the administration when he bade them farewell on the occasion of his expulsion from Prussia by Napoleon. The reforms which he advocated therein were the abolition of hereditary magistracy, very common in some parts of the kingdom, and the transfer of all judicial and police functions to officers appointed by the king; the formation of a national legislature; and the establishment, not of the right only, but of the duty of all property-owning classes to participate both in the administration and legislation of the state. This last principle (of obligatory service) was realized in Stein's municipal corporations act of 1808. Cf. Bornhak, Bd. III, S. 4, where a portion of the text of the "testament" is published.

[2] Edict Oct. 9, 1807. [3] Ordinance Dec. 26, 1808. [4] Meier, S. 240.

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already initiated. But his expulsion from office at the instance of Napoleon prevented him from conferring upon the nobility any powers of local government — and, in fact, from establishing any general system of local government whatever. It is very doubtful whether his ideas were capable of realization at that time; for when put in practice by the Dohna-Altenstein ministry (which both succeeded to his place and adopted his plans) they met with no success whatever.[1] The social conditions seem to have been too unfavorable. Long bureaucratic rule had too far weakened the political capacity of the people, and the pecuniary dependence of the poorer upon the richer classes made the exercise of local power in the interest of any but the richer classes difficult if not impossible.

The failure of Stein's immediate successors brought to the front Hardenberg, who became chancellor in 1810. His name becomes closely associated henceforth with that of Stein: the reform as a whole is commonly known as the Stein-Hardenberg reform. But in reality the immediate purposes of these statesmen were quite distinct, and with Hardenberg's accession to power the direction of the movement changes.[2] While Stein made local self-government (*i.e.* administration by the people) his aim and end, Hardenberg was determined to subordinate administration to the position of a means to an end, and that end was the freeing the individual from the restraints and restrictions which had come down from the feudal, the guild and the mercantile systems. He wished to make a practical application in Prussia of the *laisser-faire* principles of Adam Smith, with whose works he was well acquainted and for whom he had a great admiration. He believed that the bases for such a system of self-government as Stein desired must be found in a state of society different from that then existing in Prussia; that the first thing to be done even in order to attain the ends aimed at by Stein was to change existing economical and social

[1] This failure, it must be admitted, was in part due to the character of Count Dohna, who always found it difficult to make any decision. Meier, S. 162 ff.

[2] Bornhak, III, S. 6. *Cf.* also Meier, S. 135, 170–172; and Seeley, Life and Times of Stein, *passim*.

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conditions. To do this in a state in which the administration was everything, as it then was in Prussia, he believed that it was necessary to have under his control a highly centralized and easily directed administrative system, of a character totally opposed to that of decentralized self-governing England for which Stein had such a longing. Hardenberg had before his eyes a concrete example of such a system, *viz.* the administrative system of France — a system which not only conformed with his idea of what was necessary but which also had been formed for the express purpose of accomplishing for France what he wished to accomplish for Prussia. In France it had served its purpose, and it was only natural for Hardenberg to believe that what had been done in France might be done with a similar instrument for his own country. Stein wished to introduce into Prussia the English justice of the peace and parish constable; Hardenberg had a leaning towards the French prefect and sub-prefect with their attendant *gendarmerie*.[1] Hardenberg, however, did not succeed in overturning what Stein had already done; although he did actually introduce the French *gendarmerie*, for whose duties Stein had made no provision.

Stein had divided the country into what were known as "government districts" (*Regierungsbezirke*) at the head of each of which was placed a board of officers called the "government" (*Regierung*).[2] This authority had charge of almost all affairs of the central administration which in the nature of things could be attended to in the localities, while purely local matters were left in the management of the cities and of the rural communities under the supervision of the "governments." Hardenberg suffered this organization to remain as it was; but in order to increase his influence over it, he put every two or three districts under a governor, or "superior president" as he was called, who was the representative of the central government in the province.[3] Further, the existing circle organiza-

[1] Meier, S. 169 ff. Hardenberg in fact drew up a cabinet order (Aug. 1, 1812) providing for a prefect in the district and a sub-prefect in the circle. This order was never enforced.

[2] Ordinance Dec. 26, 1808.

[3] Ordinance April 30, 1815.

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tion was retained. Each "district" was divided into circles, or rather a historic Prussian division of the country into circles was retained, with the necessary modifications; and at the head of each of these circles a historic Prussian officer (the *Landrath*) was allowed to remain though now he was placed in the strictest subordination to the "governments."[1] All of these authorities, the governor, the "government" and the *Landrath*, were placed under the direction of the chancellor, which last position Hardenberg himself assumed. All the officers of this administrative system, with perhaps the exception of the landrath, were professional in character — that is, they were salaried officers and devoted their entire time to their work, for which they were obliged to pursue a long preparatory course of study and a practical apprenticeship. The system was thus as before a centralized bureaucracy. But it was better organized than before; and it was directed by a man of advanced liberal ideas, who made use of the vast power he possessed to further the interests of the state as a whole and not those of any single class. With this wonderfully efficient instrument great progress was made in carrying on the economical reforms begun by Stein. The privileges of the guilds were either bought up or taken away by law, and trade was freed from their restrictions.[2] All internal taxes in the nature of customs which hindered the pursuit of commerce were repealed,[3] and a most important step was taken towards the future unification of Germany by the formation of the "customs union." Feudal privileges soon followed the privileges of the guilds,[4] and the iniquitous tax system of the old régime was for the most part replaced by a uniform and proportional system.[5] The only exception to this tax reform was to be found in the land tax, which remained in very much the same state as before. The

[1] The circle organization was extended over the whole kingdom by the *Gendarmerie* edict of July 30, 1812. The ordinance of July 30, 1815, put a *Landrath* at the head of each circle.

[2] See, *e.g.*, edict Oct. 28, 1810.

[3] Laws May 26, 1818, and Feb. 8, 1819.

[4] Edict Sept. 14, 1811.

[5] The general plan was elaborated in the law of May 30, 1820.

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exemptions from the land tax recognized by the old laws were too widespread and of too long a standing to admit of any great modification at that time.

But before this great reform could be completed, Hardenberg died (1822); and the most powerful of the social classes against which it had been directed — the great landholders — again came to the front and took advantage of the reaction which naturally sets in after any period of progress. Though much weakened by the reforms already accomplished, the privileges still belonging to them gave them great social power and naturally therefore great political influence; and they succeeded finally in persuading the king that the basis of the royal power was to be found in a loyal and powerful nobility and that it was a great mistake for him to allow their prerogatives to be so much curtailed. By effecting a union with the bureaucracy, which had been disorganized by the death of Hardenberg, they arranged a partition of the field of government: the nobility to take the sphere of local government, the bureaucracy to content itself with the management of the affairs of the state at large. There were therefore formed in all the provinces and circles of the kingdom local legislative and administrative bodies called "estates," in which the predominant influence was given to the large landholders.[1] At the same time greater power in municipal matters was given to those nobles on whose estates cities had grown up, and the cities themselves were placed under a stricter central control.[2] After the accession of Frederick William IV the nobility went a step further. They persuaded the king to form a legislative body for the whole land, composed of representatives of the local legislative bodies and called the United Diet.[3] By means of this body, which they controlled, the landholding class against whom the reforms had been directed again obtained control of the country. They did not scruple to make use of their power to block a further reform which was most

[1] Law June 5, 1823.

[2] This was done by the revised municipal corporations act of 1831.

[3] Patent and ordinance Feb. 3, 1847.

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necessary but which would have injured them in the same proportion that it would have benefited the other classes of the community — *i.e.* the reform of the land tax, which was demanded with great vehemence by all other classes. But the nobility had forgotten that their power in the community was not at this time what it had once been. In Prussia as in England the nineteenth century ushered in great social changes. The industrial development that began in this century and the long peace that followed the revolutionary and Napoleonic wars had favored the accumulation of a vast amount of personal property. The industrial and commercial classes thought that the power which they possessed in the affairs of every-day life was not sufficiently recognized in the governmental system; and the refusal by the nobility of their just demands for recognition led to the revolutionary events of the year 1848. The revolution of that year was really little more than a protest on the part of the possessors of personal property, *i.e.* the mercantile and manufacturing classes, against the monopoly of governing enjoyed by the possessors of large estates in land, *i.e.* the nobility. In consequence of this revolution the king granted to the people a constitution.[1] In that this constitution made provision for a legislature to be formed by electors possessing a certain amount of property, — not necessarily landed property but any kind of property, — an opportunity was given to the possessors of capital to make their influence felt and to introduce by means of legislation the reforms which they desired. This they were not slow in doing: within a few years nearly all the privileges that were still attached to the possession of landed property were completely swept away. Land was made completely alienable by the agrarian legislation of the years 1848–50; and manorial courts, which existed in large numbers in the eastern provinces of Prussia, were abolished.[2] The possessors of personal property were given an influence in the government of the localities equal to (if not

[1] Dec. 5, 1848. This constitution was amended by the legislature for which it provided; was promulgated in its amended form January 31, 1850; and is still the organic law of Prussia.

[2] Ordinance Jan. 2, 1849.

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greater than) that of the possessors of landed property; for both the municipal and the rural localities received a substantially similar administrative organization with a similar property qualification.[1] Finally, many of the inequalities of the land tax were done away with and a long-desired reform partially accomplished.[2]

In their first flush of triumph the Liberal party made too selfish a use of the powers from whose exercise they had so long been shut out and laid themselves open to the same reproaches that had been cast against the Conservative party in the preceding period; and again the inevitable reaction set in. The nobility, against whom the laws of the new legislature had been directed, persuaded many of the Liberals that the new legislation had been too regardless of private rights and that the only safety of the property-owning classes lay in their union over against the poorer classes, who naturally formed the most radical elements of the Liberal party, and who had begun to make demands for the redress of their peculiar grievances. A coalition was formed, which finally got control of the legislature and immediately proceeded to undo much of what had been done by the Liberals in their brief lease of power. The new majority, however, was not content simply to use the legislative power of the country to redress the grievances of the previous period; they determined to secure the permanent supremacy of their interests. To do this it was necessary to control the administration and at the same time to reorganize somewhat the legislature itself. The control of the administration was of the greatest importance on account of the rôle it played in the state. The bureaucracy established by Hardenberg not only discharged almost all important administrative functions but also controlled what few organs of local government were in existence. The necessary control of the administration could be secured by controlling the bureaucracy. This was done, first, by the temporary introduction into the unwritten constitutional law of Prussia of the principle that the ministers of the crown must have the con-

[1] Gemeindeordnung and other laws of March 11, 1850.
[2] Law Feb. 4, 1850.

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fidence of the party in majority in the Diet. That is, the ministers should cease to be the representatives of the crown — the impartial arbiter between the conflicting claims of social classes — and should be the partisan agents of the predominant social class. Secondly, it was made possible for the ministers to remove all the higher administrative officers subordinate to them from active participation in the administration.[1] Since many of the local officers were to be found in this class, the ministers (and through them the predominant political party) had complete control over the administration of the country.

The coalition then proceeded to use the administration to preserve their majority in the lower house of the Diet. The preservation of this majority was thereafter its chief duty.

A question of party was made of the appointment and of the confirmation of appointment of all local officers, of the granting of licenses for hotels and for the sale of liquor, of the granting of passports (which were at the time necessary in order to travel about) and of licenses or permits to build, *etc.* Such powers were made use of in the most barefaced way to influence parliamentary elections, and the boast was frequently made that one of the advantages of a strong and conservative government was the partisan use of the police force even in the capital, Berlin.[2]

All that was left now to be done in order to secure the position of the coalition party was to control the House of Lords. This control was obtained by a reorganization of that house in 1853–54, which gave it a permanently reactionary character.[3]

After securing their position in this way, the reactionary party went energetically to work to reap some of the advantages of power. The field that offered the most abundant harvest was that of local government in the rural districts, since it was there alone that large landed estates were to be found. As has been shown, the capitalistic legislation of the year 1850 had provided for both city and town a very similar administrative organization — similar at any rate as far as the qualifications for suffrage

[1] Law July 21, 1852.

[2] R. Gneist, *Révue générale du droit et des sciences politiques*, Oct. 1886, p. 265. *Cf.* Bornhak, Bd. III, S. 256.

[3] Law May 7, 1853, and ordinance Oct. 12, 1854.

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were concerned. As the basis of voting was simply the possession of property, this legislation had given to the possessors of personal property or capital the same influence in the local government of the rural districts that was possessed by the owners of land. This was felt by the landholders to be unjust; and the first thing that was done by the reactionary party, when they had sufficiently secured their power, was to change the administrative organization of the open country in such a way as to put its entire control in the hands of the landed interest and for the most part in the hands of the larger owners of land.[1] In the government of the towns the landholders of course had no great interest. All the changes made in the municipal organization were intended simply so to curtail the power of the towns as to take away from the persons of whom they were composed, namely the capitalistic class, the power to interfere with the control that the landed interest had managed to obtain over the general legislation of the country.[2]

Such was the condition of the Prussian administration under the Conservative party. The reactionary period lasted till about 1860. The entire power of the government was prostituted in the interest of party; the administrative law was applied in a most partisan way, and class legislation changed the local administrative organization for the benefit of the Conservative party and the landed interest. It must not be supposed that such a misuse of governmental powers was made without a protest on the part of the disorganized Liberal party; but all attempts at remedying this scandalous condition of affairs had to be suspended in the face of the celebrated constitutional conflict which soon broke out between the new king, William, and the majority in the legislature on the subject of the army appropriations. After this had been settled, the foreign policy of Prussia was so absorbing as to leave little time for the consideration of internal matters. It was only after the formation of the empire that there was opportunity for any movement in the direction of

[1] Law May 24, 1853.

[2] Gemeindeordnungen May 30, 1853; May 31, 1853; March 19, 1856; May 15, 1856.

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reform. The monarchy was then so strong (as the result of the favorable issue of the great conflict with the Diet) that it was able to guide the movement and prevent it from being undertaken, as the previous reforms had been, in the interest of any one class.

The great constitutional conflict — whatever may have been the merits of the claims of the parties to it — had certainly some good results. It taught the Prussian people that the government should be superior to any social influences; and that in a monarchical government the crown is the natural arbiter between the various social classes. The experience of the people was a bitter one, but the lesson was thoroughly learned.

What was needed, according to the opinion of the leaders of the reform, was to introduce into the Prussian administrative system the principle of obligatory unpaid service by the rich and middle classes in police, tax assessment, military and other matters. It was believed that such service would foster public spirit and beget the ability to regard state affairs with other than class feelings.[1] The necessary concrete reform measures were sketched by Dr. Gneist in his little book entitled *Die Kreisordnung*, in which he often referred, as had Stein before him, to the English system which they both knew so well and admired so much. After a long discussion and the preparation of several bills, the plans advocated by Gneist were to a great extent incorporated into the law of December 13, 1872, commonly known as the *Kreisordnung*. The adoption of Gneist's ideas was due to Bismarck, who supported them in the face of the opposition not only of the general public but also of all his colleagues in the ministry and of the greater part of the government officials.[2]

[1] Gneist, *l.c.* p. 250.

[2] That Bismarck was heartily in favor of some such system of local government as that of the England of a few years ago, in which power was given to the well-to-do classes in local matters, may be seen from a passage in a report made by him when a member of the Bundestag in the year 1851. Bismarck is there criticising the bureaucratic policy of Prince Schwarzenberg in Austria: "With the phrase 'I can't possibly give all the governors' places to my six imbecile cousins,' Prince Schwarzenberg gets rid of the Austrian aristocracy; to whom, indeed, he should not give places in the state service, but whom he should make useful in the local organization. Instead of

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In addition to the *Kreisordnung*, several other laws were passed in the course of the next ten years, all either carrying the reform further or modifying details which experience had shown to be faulty. The definite ends which this reform had in view were:

I. The extension of local self-government.

II. The introduction of a judicial control over the actions of administrative officers.

III. Decentralization, and at the same time the introduction of a non-professional or lay element into the administration of state affairs.[1]

The means by which these ends were sought were:

I. A reorganization of the circle and the province as administrative districts for the purposes of general state administration.

II. The organization of administrative courts.

III. The devolution upon the localities of certain services heretofore attended to by the state.

Although the reform was at first introduced into the eastern provinces only, — and not into all of these, since Prussian Poland was excepted, — it was intended for all the twelve provinces. Since 1872 it has been extended by special laws, differing only in minor details from the original laws, into all the western and northern provinces. At the present time, therefore, Prussian Poland (Posen) is the only province which does not enjoy the new privileges of local self-government. The reason of this exception is that the government has not thought it possible, with due regard to the safety of the state, to give the Polish Prussians powers which might be used to its disadvantage. Posen lies upon that boundary of Prussia which is naturally

vivifying and putting to use the rich material for communal and provincial purposes that Austria has in its nobility and city corporations, he shatters it to pieces, to put in its place the subaltern clerk and the gendarme." Preussen im Bundestage, IV, 22. *Cf.* also *Révue générale* (cited above) in which Gneist says: "L'homme d'État qui dirigeait en 1868 les destinées de la Prusse se décida à entreprendre cette œuvre dans ce sens, et ce sera un mérite impérissable du Prince de Bismarck d'avoir été *le seul* dans un moment critique à maintenir ce point de vue élevé."

[1] De Grais, Handbuch der Verfassung und Verwaltung, S. 51.

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most exposed, and reaches westward to within about one hundred miles of Berlin. Its people are in race alien to the great body of the Prussian people, and are in feeling notoriously hostile to the government of the Prussian state. It has thus naturally seemed necessary to maintain, for a time at any rate, the Hardenberg bureaucracy, and to allow the localities only very limited powers, exercised always under a strong central control.

II. *General Effects of the Reform.*

The reform has not changed the fundamental administrative divisions heretofore existing, that is, the province, the district and the circle. The twelve provinces are subdivided into government districts, of which there are in the entire monarchy thirty-five. Each district is further subdivided into circles, which are either town or country circles, the town circles being such towns as have over 25,000 inhabitants. These town circles are exempted from the jurisdiction of the rural circle within which they may be territorially situated. There are in all 464 circles, of which thirty-seven are town circles. Below the circle is the *Amtsbezirk*, created by the reform legislation for local police matters. These areas, constructed for what is known in Prussia as the internal administration of state matters, were adopted rather on historical grounds than to suit modern conditions. They are often unevenly and unwisely formed: portions of some of the provinces even lie as enclaves within the limits of others. In certain other administrative branches practical needs have broken through historical precedent, and new areas have been formed. This has produced a further confusion and inconvenience: that of different districts for different purposes. The circle of the reform legislature may or may not be the provincial division employed for the administration of justice or for military or tax matters.[1]

[1] Thus, for example, one circle (that of Rinteln) belongs for the purposes of general administration to the province of Hesse-Nassau, for those of justice and military affairs to Hanover, and for those of the indirect tax and postal administration to Westphalia. De Grais, S. 57, Anm. 16.

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The complexity of Prussian local government arising from the non-coincidence of the areas employed for different administrative purposes is further increased by the mere existence of so many areas for the single purpose of the administration of internal affairs. The reason is, again, that the Prussian reformers have been forced to have regard to historical considerations. The division of the country into provinces was due to the territorial expansion of the old mark of Brandenburg; each province represents one step in the growth into a state of European importance of what was once simply a district of the old German kingdom. All the provinces, on account of their original connection with other states, had to be treated differently when they were incorporated into the Prussian monarchy. The result, at the time the late reform was undertaken, was that all the provinces had peculiar local institutions — institutions, in many cases, of great vitality. It therefore seemed necessary, while making the general organization more symmetrical and uniform, to retain these provincial institutions in the reformed system. At the same time the official organization adopted by Stein and Hardenberg for the general administration of the internal affairs of the kingdom had proved itself so good that it was felt to be unadvisable to transfer its functions to other authorities. It accordingly seemed necessary to retain both the province and the government district with their respective authorities. At the same time, it seemed desirable and feasible to impose upon the provinces certain duties previously discharged by the central government.[1] The result is that the province is now in the main a municipal corporation, and its authorities attend to matters which in the main interest their province only; while the government district is an administrative district simply (with no juristic personality), and its authorities are concerned with the administration of internal affairs which affect the state as a whole. In general, these two classes of provincial

[1] Thus the care of the main roads was transferred to the provinces. For the discharge of these new duties new resources were supplied, consisting in what the English term "grants in aid," *i.e.* state subsidies. These last amounted in all to about $7,500,000 a year.

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authorities may be said to attend mainly to business affecting the entire state, since the functions of the "governments" in the government districts are really more important than those of the purely provincial authorities. There is a lower class of authorities established mainly for the administration of local matters. These are to be found in the circle, and its subdivision the amtsbezirk. The circle has somewhat the same history as the province. Originally established in the days of feudal Prussia for the administration of the taxes which the monarch succeeded in imposing upon his people, the circle authorities became later well recognized members of the Prussian scheme of general state administration and have been preserved (though in a much modified form) by the latest legislation. The functions of the circle are dual in somewhat the same sense as are those of the province, with this difference: that while the duties of the province are mainly state duties, those of the circle are mainly local duties, *i.e.* duties affecting the circle alone. Still, the authorities entrusted with the performance of these two kinds of duties in the circle are not, as in the case of the province, always different, but often the same.

With the province and the circle, the list of the Prussian administrative authorities is about exhausted. The only exception is to be found in the lowest of all authorities, *viz.* those of the communes, rural and urban. The rural communes are so unimportant as to deserve little more than a passing notice, their functions consisting for the most part in the regulation of the purely prudential matters of very small localities; but the urban authorities rise to a great importance, especially in the larger cities, all of which are exempted from the jurisdiction of the circle and are themselves regarded as urban circles. Indeed, Berlin is exempted from the jurisdiction of the province also.

The general principle which has governed the grant of local powers by the legislature is quite different from that in force in the United States. While in this country the rule is to insist upon an express authorization of law for the exercise of any power by municipal corporations, especially by what we term

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quasi-municipal corporations such as the counties and rural townships, the Prussian law often makes use of general rather than specific grants. It simply gives the locality the power to regulate its own affairs as it may see fit, without expressing in detail the things which it may do. On account of these wide and general grants of power to local corporations it has been felt to be unsafe to permit them always to do what they may wish within the wide limits of the legislative grant. Therefore there has been formed, in Prussia, an administrative control, which is exercised by the higher over the lower authorities, especially by the central over the purely local authorities. By means of this control (which is almost unknown in our system) the general powers granted by the legislature may often be quite seriously limited when the specific exercise of these powers by a given locality is believed by the superior authority to be unwise. On account of the many degrees in the Prussian administrative system and the number of the authorities in each degree, this system of central administrative control offers as many difficulties both to the student and to the administrator as does the question of areas. All local authorities are under the control of some central authority, the authority with which the control is lodged being determined by the importance of the local authority. Appeals from the lower to the higher authorities are allowed with great freedom. The administrative procedure is thus complicated to the last degree.

Such are the results of the reform in so far as it affects the questions of areas and kinds of authorities and their relations to each other. Another paper will treat of their organization and functions, in the hope of ascertaining how far the main purpose of the reform has been fulfilled, *i.e.* how far the Prussian people enjoy as a result of the reform the privileges of local self-government, how far the new administrative institutions have succeeded in neutralizing the effects of class prejudices and the conflict of social interests.

FRANK J. GOODNOW.

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REVIEWS.

Benjamin Franklin. By JOHN T. MORSE, JR. [American Statesmen Series.] Boston and New York, Houghton, Mifflin & Co., 1889. — 12mo, 428 pp.

Mr. Morse opens his volume with an apology for its existence, which to all who read his clear and well-written narrative must seem unnecessary. The book would be welcome even if Franklin's career had been satisfactorily dealt with before. Mr. Morse believes this to be the case: he quotes and accepts Mr. Bigelow's opinion that "the delightful work of Mr. Parton has left no place in English literature for another biography" of Franklin. According to library statistics, it is true, Mr. Parton's *Franklin* is more popular than even the latter's autobiography: in one popular library it was found to range as number seventeen among the most popular books, of which the first twenty-seven, with this solitary exception, were works of fiction. With all respect to Mr. Parton's literary reputation, I think this is the proper level for his book; and the most general criticism to be made of this new life is that it has made the older one entirely too much of an authority. Accepting Parton as an authority, Mr. Morse has been led into some errors which would not have occurred, had the original sources of information been consulted. Thus the grant of land on the Ohio, known as the "Walpole grant," was complete and final so far as England was concerned, and the scheme failed to be carried out, not by "universal consent," but because the Continental Congress, after winning this territory, did not choose to hand it over to men whose sole claim consisted in a grant, gained by undue influence, from a country which could give but not hold it. Here also is a repetition of the story of the "figured Manchester velvet" suit, which was said to have been worn when Franklin was insulted in the Privy Council, and which he is made to don again at the signing of the treaty with England. However picturesque and valuable this fable is to a writer of fiction, any one who has studied Franklin's career should know that he could never have done so theatrical an act, even had there not been the most positive testimony as to the untruth of the story. Again, the statement that Franklin was elected a delegate to the Federal Convention in order "that in the possible absence of General Washington there might be some one whom all could agree in calling to the chair," is hardly borne out by the facts in the case. The mistake in the date of

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Franklin's election is the author's own slip; and there are some other errors which cannot be traced to Mr. Parton. Mr. Morse praises Franklin's examination on the stamp act as "strictly impromptu." He seems to have overlooked the charge contemporaneously made in England (and which alone can account for some of the queries) that when Franklin sent the examination to press he omitted certain portions and changed others. Again, the formation of the Pennsylvania constitution can hardly be considered as a step towards the Declaration of Independence, for the latter was an accomplished fact two months before. Finally, Pennsylvania and New Hampshire historians will probably be surprised to find the Pennsylvania Assembly appointing Franklin to the "Provincial Congress," and John Temple enrolled among New Hampshire's governors.

There are some matters which we wish might have received a greater proportional amount of space: notably the proposed articles of confederation and the formation of the Pennsylvania and federal constitutions. But the proper value of each event is a difficult thing to estimate; and, as Mr. Morse was unfortunately writing a book for a series and so was limited in space, he can hardly be blamed for omissions. No American statesman was so many-sided as Franklin; no American life is more difficult to write. Mr. Morse has at least given us by far the best work on Franklin's political career.

PAUL LEICESTER FORD.

George Washington. By HENRY CABOT LODGE. [American Statesmen Series.] Boston, Houghton, Mifflin & Co., 1889. — 2 vols. 12mo, vi, 341, 399 pp.

The career of Washington naturally falls into three periods: the first ended with his taking command of the continental army; the second, with the adoption of our existing constitution; and the third begins with his election to the presidency. In the first he was a youth, making his way in influence and gaining experience as a provincial soldier, a farmer and a provincial legislator. In the second he is the soldier-leader of the revolution, and the influential planter paving the way for completing the ends of the contest by the establishment of a constitution; in the third he is the agent of that constitution, but still so powerful as to give it a trend that is felt to this day. It is readily seen how good a subject for the biographer is offered, and how varied the lights in which it must be studied. At the same time it is an extremely difficult subject, as well because of this many-sidedness as of the incomplete record at hand. There are limitations, too, that may be called natural limitations, that must affect the biographer, and it is here that Mr. Lodge is weakest.

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To reconstruct the Virginia plantation life and enter into its spirit is an almost hopeless task for one who has not so much as studied its ruins as they are to-day. So that, apart from his leaning to tradition in the earlier life of Washington, Mr. Lodge has failed to catch the surroundings that must have influenced so strongly the mind of the young Virginian. There is, also, a lack of definiteness in the earlier chapters on certain matters that had to others become clear before Mr. Lodge wrote, or have since been made clear by the painstaking researches of antiquarians. For example, the "lowland beauty" is now believed on good evidence to have been Betsy Fauntleroy and not Mary Bland. Mr. Lodge is, we believe, correct in concluding the famous "rules of conduct and good behaviour" to have been merely copied from some book by the young George; but he too eagerly accepted the story of the copy of Mather's *Young Man's Companion*. The researches of Mr. Waters on the pedigree of Washington have been published since Mr. Lodge's volumes, and are of great value in clearing up that point. Mr. George H. Moore has disproved the outbursts of temper shown at Monmouth and on St. Clair's defeat, while the researches of Mr. Conway and others show how important the plantation life of Washington was in determining the character of the man. New material is constantly being brought to light, and as the mass of it is of a private nature it cannot but modify our conceptions of the man.

Exception may be taken to some of the statements made by Mr. Lodge, if a strictly historical standard be applied. For example, he makes Washington, after taking command of the army at Cambridge, return "to his pleasant quarters in the Craigie house"; when, in reality, Washington must have gone to the President's house. So also he represents Washington as wearing on this occasion "across his breast a broad blue band of silk, which some may have noticed as the badge and symbol of a certain solemn league and covenant once very momentous in the English-speaking world." There is no evidence of such a band or ribbon until nearly two weeks later, when it was adopted that the guards might be able to recognize him.

One feature of Washington's character Mr. Lodge has brought out with admirable distinctness, and he rightly returns to it again and again, for it was indeed one of his most marked characteristics, responsible for his success. Washington was an indefatigable worker, accustomed to great detail and fond of it. Whether he is making up his farm accounts, noting his crops and planning the rotation, summarizing a book on agricultural practice, stating the needs of his army, or noting the progress of a diplomatic negotiation, we find the same painstaking care, the same minuteness, the same absence of personal color, and the same omission of conclusions. Were he a private secretary to another and bound by

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his instructions to lay before his master a full and exact state of what is passing, he could not have performed the labor more thoroughly and conscientiously, or with less regard to his own views in the matter. As Mr. Lodge says of his work in organizing the army: "It was neither showy nor attractive, such work as this, but it was very vital, and it was done."

This suppression of self has made it difficult to form a picture of Washington as he really was, as he has denied us the material out of which such a picture must be formed. The mythical Washington dominates in the popular opinion to this day; and the biography that has had the greatest popularity is the purely imaginary work of the fiddling, itinerant parson, Weems. Mr. Lodge is not the first to protest against the prevalence of Weems' dreams; but in reading Mr. Lodge it cannot but occur to one that perhaps his conception of Washington, expressed in such even sentences, may be quite as misleading as was that of Weems. In avoiding the pit into which the parson fell, — and we might almost say Mr. Sparks too, as they both produced a most tiresome prig, — Mr. Lodge has gone to the other extreme, and has given us a Washington so obviously made to cope with the circumstances in which he is placed, as to convey the idea of a clever mechanical creation, in perfect keeping with the surroundings and exactly calculated for every emergency. In demolishing the goody-goody figure that the leisure and imagination of Weems set up as a national hero, Mr. Lodge has given us a man of heroic proportions, instinct with life and action, prescient and of quick grasp and comprehension, and so well equipped physically, morally and intellectually that he is equally perfect in any sphere of life in which he is by force of circumstances placed. There can be no doubt that the picture is more pleasing, because more human, and more truthful, because it is constructed on a historical basis. And Mr. Lodge's Washington is far better adapted to seize upon the fancy and leave a real and lasting impression than the wax work of Weems. But it does not follow that Mr. Lodge's Washington is the *real* Washington, and exception may be taken to the well-rounded perfection that is conferred upon this new and latest Washington. No one who has given any study to the writings of Washington, to the times in which he lived and the men whom he labored with or fought against, can close the examination without a feeling of wonder, not unmixed with awe, at the figure presented. The spirit of hero worship naturally infects the reader, for he is dealing with a man immensely great, and with a history which is little but a record of conquests over apparently insuperable difficulties. Much enthusiasm can be expected in a biography of Washington for this reason; but it is a question whether Mr. Lodge's enthusiasm has not carried him too far. He contends that Washington was not a dull man, and to

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prove his point confers upon him an alertness, quickness of comprehension and rapidity of action that are exaggerated. He wishes to prove him an intelligent man, and to do it attributes to him a prescience that was certainly out of his character. To destroy the cold and unsympathetic prig, he sets up a man of hot and fiery, but controlled temper; a man capable of bursts of passion, but schooled into restraining them. He represents him as a great general and a born fighter; but military critics are not enthusiastic as to his generalship, and it was, as Mr. Lodge says, his idea to maintain an army rather than risk all his stake on the chance of a battle. He led the army, he led Congress, and he led the states; in short, the revolution rested on his shoulders, and on him depended success or failure.

In dealing with the difficulties attending the adoption of the constitution, the wide influence of Washington is admirably shown; but we wish Mr. Lodge had described how the office of President became what it is in the constitution, because of the universal expectation that General Washington would be the first to hold the place. The government formed, statecraft becomes the prominent feature; and here in many places the politician influences the writer, not always to the advantage of the latter. It would require too long an article to show wherein Mr. Lodge's party zeal has carried him beyond the bounds of a biographer; but the chapter on foreign relations goes far to redeem whatever fault may be found with the discussion of Hamilton's report on manufactures — being moderate in tone, and excellent in the arrangement. A deep-seated prejudice against England occasionally crops out, but when compared with the writings of those from whom Mr. Lodge draws his information, he is moderation itself. It is comparatively unimportant whether or not Washington was a party man, for all his acts and conduct were based upon a principle higher than party — the welfare of the state. The marked ability, genius and restless activity of Hamilton gave him an ascendancy in the cabinet that no claims of party, no subscriptions to campaign funds nor indorsements of party leaders could have conferred. First and last Washington was controlled by his ardent wish to do what the interests of the country demanded; and the result is that no administration has ever equalled his in the high moral tone that inspired it. His doctrine of appointments is as true to-day as it was in 1789:

> As a public man acting only with reference to the public good, I must be allowed to decide upon all points of my duty, without consulting my private inclinations and wishes. I must be permitted, with the best lights I can obtain, and upon a general view of characters and circumstances, to nominate such persons alone to offices as in my judgment shall be the best qualified to discharge the functions of the departments to which they shall be appointed.

And, as Mr. Lodge adds, he "lived up exactly to his declarations."

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But none of these criticisms alters the fact that we have here for many reasons the best biography of Washington yet written. It is written with admirable spirit and enthusiasm, expressed in clear and choice language. The narrative never lags, and is never forced. Instead of a "merely wise, good and solemn" personality, Mr. Lodge has given us a man of superabundant activity, a nature that appeals to our interest. A psychological analysis of Washington's mind can as yet be attempted on very partial evidence; but until such an analysis is possible, Mr. Lodge's volumes will afford the best estimate we have of the man's personality.

WORTHINGTON CHAUNCEY FORD.

A History of the Kansas Crusade, its Friends and its Foes. By ELI THAYER. Introduction by Rev. EDWARD EVERETT HALE, D.D. New York, Harper & Brothers, 1889.

All students of American history are acquainted with the great services rendered to the cause of liberty by the Emigrant Aid society. At the time when the fate of free institutions in America seemed most doubtful, when the slave power had imposed squatter-sovereignty upon the territory of the United States, a handful of men in New England devised a plan which checked the advance of the South, and which, being adopted as the creed of the Republican party, ultimately led to the abolition of slavery. No historian to-day would be so foolhardy as to deny the debt of gratitude which is owing to the men who organized this society and directed it to the accomplishment of its ends.

Prominent among these men was Eli Thayer, the secretary of the Emigrant Aid society and the author of *The Kansas Crusade*. From his position he must have known all the details regarding the raising and disbursement of the necessary funds; the means adopted for rousing the enthusiasm of the North, for inducing young men to leave their homes for the dangers and discomfort of a new country; the measures for arming and protecting the emigrants both on the field and in the cabinet, — in fine, all the minutiæ which contributed to make the Kansas crusade so striking a success in political and economic history. It was to have been expected that a volume on this subject from such a source would teem with valuable material for the historian.

This is not the case. The book contains little that is valuable or interesting. It is composed largely of clippings from contemporary newspapers, and is so carelessly compiled that the author sometimes presents us twice with the same extract. What few new facts he does bring are unsystematically arranged. His vision is so narrow that he never sees any side of a question but his own; those who differ from him are not only weak-minded, but wicked.

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Mr. Thayer's avowed object in writing this book is to prevent the abolitionists from obtaining any share of the credit attaching to the successful struggle against slavery. He fails to appreciate the deeply moral spirit of men like Garrison, which led them to denounce all half-measures and compromises such as politicians and statesmen are happy to carry through. He attributes to them only the basest and most sordid motives, forgetful that they differed in aim only from the "root and branch men" of the seventeenth century. In his efforts to glorify himself, and incidentally the Kansas crusade as his work, Mr. Thayer occasionally becomes ridiculous; as when he attributes the present material prosperity of the South directly and solely to that movement.

ROBERT WEIL.

The History of Land Tenure in Ireland; being the Yorke Prize Essay of the University of Cambridge for the year 1888. By WILLIAM ERNEST MONTGOMERY, M.A., LL.M. Cambridge University Press, 1889. — vi, 191 pp.

This is a valuable and suggestive little work. Students of the Irish question will find in it a concise and accurate presentation of the historical facts which are essential to an understanding of the social-economical phase of the long-standing difficulties. The author's endeavor to "write without prejudice and to carefully eschew present political controversy" is entirely successful. The rarity of such endeavor and of such success in the literature of Irish history gives extraordinary value to every new instance.

The key to an understanding of the land question is contained in the quotation from the Bessborough commission's report which Mr. Montgomery places at the head of his work:

> There has in general survived to the Irish farmer, through all vicissitudes, in despite of the seeming or real veto of the law, in apparent defiance of political economy, a living tradition of possessory right such as belonged in the more primitive ages of society to the status of the man who tilled the soil.

The history of Irish land tenure involves little more than a comparison of the relation of the law at successive periods to this one persistent fact. It is on this idea that the essay before us is constructed. In part first the ancient Irish law, as expressed in the old Celtic customs and the Brehon code, is examined. The possessory right of the cultivator under this system is embodied in the principle of tribal ownership and succession by gavelkind. It is always an interesting question how far the tendency toward individual ownership is traceable in the early centuries of connection with the greater island. Mr. Montgomery summarizes very well all that can be said on this matter. He finds the progress of

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natural feudalization undeniably manifest, though doomed never to be consummated. The coming of the Saxon and the thorough conquest of the Celts (completed by the Tudors) were followed by the forcible substitution of the conquerors' land-law for that natural to the soil. In the early part of James I's reign the Brehon law was abolished throughout Ireland and the English law substituted. At that time the Irish people had reached in natural development about the stage of the English in the time of the early Plantagenets. They might have comprehended and easily submitted to the feudal land-law of that age. But the feudal law as developed and refined by the work of three or four centuries of English jurisprudence was quite unsuitable for the Celts. In the work of substituting the new for the old tenures and in adjusting titles to the new system it must be admitted, as the writer shows, that the motives and processes of the crown officials were often both honorable and honest. But the net result of the work was that many natives, who by their own law had been landowners, with the privileges and dignities attaching to that status, found themselves now inevitably excluded from their ancient rights. Embers of discontent and hatred thus left smouldering were fanned into a fierce blaze by the despotic character of the Stuart reigns. Mr. Montgomery thinks that the real cause of the insurrection of 1641 is rather the land troubles than religious differences. This opinion might be open to debate, but it is at all events certain that the "commissions of defective titles" under both James and Charles contributed in no small degree to the ferocity of the insurgents. To those who had been dispossessed of their ancient estates by the abolition of the Brehon law was now added a host of unfortunates who, having been assured of great permanence and security in their holdings under the new system, found themselves constantly harassed or unceremoniously ejected through "quirks and quiddities of the law' which they could in no way understand.

The Irish rebellion was effectually terminated by Cromwell. With the vast confiscations in his settlement, followed by the readjustment of Charles II and new confiscations by William and Mary after the battle of the Boyne, the process was completed which had been going on ever since Elizabeth's conquests. Five-sixths of the land in Ireland was owned by Englishmen, and the mass of the ancient owners were mere tenants at will on the soil of which they believed themselves, with the intensity of long accumulated tradition, to be the rightful owners. The seventeenth century fixed the conditions of land tenure which the nineteenth century has tended thus far steadily to abolish. During the intervening period the influence of the inhuman religious and commercial legislation was mainly to confirm the already established system, to make the ownership of the alien landlords — in the eighteenth cen-

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tury more generally absentees than before or since — more absolute and the interest of the tenant cultivator more precarious. The author's sketch of this period, in his sixth chapter, is strikingly just. Two quotations will illustrate his general attitude in respect to the responsibility for the present situation.

> Up to the dates of the penal and commercial codes, the wrongs of Ireland are mainly to be found in that injustice which is inseparable from the *vae victis* of war. The history of the gravest wrongs of the native race begins from this period. . . .
>
> The absence of the growth of customary rights among the precarious tenants must be ascribed . . . to the fact that the proprietary rights of a servile class can only be attained by long custom. The constant surge of change in the occupation of the land caused by the compulsory removals, whether by arbitrary evictions or by evictions for non-payment of rent, prevented the possibility of the acquisition of such rights by long user. . . . The greatest wrongs inflicted over most of Ireland by the landlords upon the tenants were the deeds which prevented such a continuity of possession as would have fostered customary traits.

Mr. Montgomery does right in devoting one hundred and twenty out of one hundred and ninety pages of his work to the period before 1850. It is often thought that the land question in Ireland begins with the great famine. As is shown all through his essay, the work of the land acts of recent decades has been merely to undo what two preceding centuries had done, to find some way of securing to the cultivators of the land in Ireland a legal interest in their holdings which shall satisfy the traditional instinct of possessory right. The writer's analysis of Mr. Gladstone's great land acts is clear and intelligible. He inclines to the belief that a sweeping measure of land purchase would ultimately prove an evil, but that a statutory term such as was created by the act of 1881 (fixed rent for fifteen years) would be a more real approximation of law and fact, since such a term resembles very closely the traditional right in the soil claimed by the tenants.

Taken altogether, Mr. Montgomery's essay must be given the credit, if not of originality, at least of an exceedingly judicious treatment of old and much-handled material. A few minor slips may be noted. Pope Adrian's bull bears the date 1154 instead of 1155, Moore to the contrary notwithstanding. "Ca*n*finny" for "Ca*u*finny" is a typographical error. To follow Moore in stating that in 1177 John was made by his father "king" of Ireland is to make nonsense of much subsequent history, including the fact (stated immediately afterward) that John was always termed "Lord of Ireland." Moore seems to get his idea by translating "*regulum*," in the Chronicler, into "king," in spite of the fact that the official title up to 1541 was "*Dominus Hiberniae*."

WM. A. DUNNING.

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Finance and Politics: An Historical Study, 1783–1885. By SYDNEY BUXTON, M.P. London, Murray, 1888. — 2 vols. 8vo, xxiv, 336, xv, 394 pp.

One of the most remarkable books that has appeared in England for some time is Mr. Buxton's *Finance and Politics*. Two closely printed volumes provide a mass of interesting statistics, valuable arguments and capital anecdotes relating to finance, and afford a very mine of information and suggestion in regard to political phenomena. The book is not one to be read off-hand, but rather one to be consulted and referred to as occasion arises or leisure offers opportunity. This is so because, in the result although not in the intention, the author has not handled his great subject on any single scheme or plan. In the table of contents, and according to the headings of the chapters, a chronological order appears as the key to the whole; but in the body of the book this order is more honored in the breach than in the observance — so much so that the student will wish that the original plan had been an arrangement by subjects, not by years. On perusal it becomes obvious that the royal road to the rich contents of the book is *viâ* the index.

The main lesson, set out in ample historical detail, is that in recent English political history finance has played the leading part: that one ministry after another — no matter what its legislative programme in constitutional, social or industrial affairs; no matter what its capacity or incapacity, success or failure, in foreign and colonial policy; no matter what its achievements or its blunders in civil, naval or military administration — has been retained in office or turned out of office simply in accordance with the popular view taken of its financial work; with the way, in brief, in which it has pleased or displeased the citizen *quâ* taxpayer. Conclusive proof is afforded that, in the mother country of parliaments and representative government, the *ultima ratio*, the standard of all things political, is the pocket of the voter. Reforms, ideas, principles, grievances in commercial, social or constitutional matters may arouse interest and even enthusiasm, may cause interminable discussion and call forth all the energies of party warfare; but what Edmund Burke detected when he said: "The greatest contests for freedom in this country turned, from earliest times, chiefly upon the question of taxing," Mr. Gladstone has found true in his bitter experience with his home-rule scheme and the burden it threatened to the taxpayer. All along the appeal to the voter's pocket has proved to be the actual arbiter of the fates of governments.

All this must prove of almost startling interest to those who have personal knowledge of American political life; for in that life also we know well of the ultimate influence of the money view, although in the United

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States it is distribution and in the United Kingdom contribution which rules. That this should be so in the two nations which, of all others in history, have best established the rule of the people by the people for the people, may, on the surface, seem somewhat disheartening. But there is a philosophical basis which, if not often recognized, none the less makes this appeal to the pocket an inseparable accident of our present civilization; and there is evidence that the effects of this appeal are not wholly evil. Human progress, and even human existence, depend ultimately on the fact that human exertion secures some balance of results over and above the gross cost of maintenance during the exertion. The workman in the field or mine must not only reap a harvest sufficient to supply him with food and clothing and some rest and relaxation while he is at work, but also leave to him some margin of results with which he may be free to deal either for personal satisfaction or as a fund on which to draw while engaged in future work, or in times when work is not possible. This surplus fund he measures in money; and in his politics he naturally watches closely to see how far the corporate action of his fellows will increase or decrease the surplus funds of the community; how far political policies or acts will result in additions which may be distributed to him, or subtractions which may have to be contributed by him.

This ultimate appeal to the practical standard of dollars and cents, or of pounds, shillings and pence, has its advantages. Mr. Buxton's book is full of historical evidence as to the extreme value of such an ultimate appeal, seeing the frailty and error into which the best of statesmen seem invariably to fall. In general it would seem that, whatever the variety of reasons, the leaders the people choose unto themselves are forever rushing into mistakes; and it appears that the efforts of the popular judgment exhaust themselves in the merely negative work of arresting their leaders in pursuing fatuous and useless courses. I will very briefly describe one example, the greatest I can take, namely, Mr. Gladstone, who has an ardent admirer and loyal follower in the author of this book. As all the world knows, Mr. Gladstone enjoys the reputation of being the greatest political financier England has produced during this century. Mr. Buxton gives us in all detail the persistent efforts of Mr. Gladstone for thirty-five years, during twenty-five of which he was in office, to abolish the income tax. In 1853 Mr. Gladstone bound himself and his party to abolish this tax. In 1874 Mr. Gladstone proclaimed, in his election address, that "at a sacrifice for the financial year of something less than five millions and a half," the country was to "enjoy the advantage and relief of the total repeal of the income tax" (volume ii, page 165). The results of the election were disastrous to his party, and the income tax still remains. Mr. Lecky, indeed, has very severely

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criticised this promise of Mr. Gladstone's: "We have ourselves seen a minister going to the country on the promise that, if he was returned to office, he would abolish the principal direct tax paid by the class which was then predominant in the constituencies." Mr. Lecky was wrong in this latter idea, for Mr. Gladstone found to his cost that the class predominating in the constituencies cared neither for the income tax nor for its repeal.

There is another matter which Mr. Gladstone has urged with equal persistency and even less success. He has constantly advocated retrenchment; he has spoken of true economy in expenditure as the one right basis for the remission of taxation. But, as Mr. Buxton has perforce to point out: "When Mr. Gladstone first became Chancellor of the Exchequer, he found the gross national annual expenditure at fifty-five and a half millions a year, when he finally left the Exchequer it stood at some eighty-five millions. . . . The tax revenue of 1852 was fifty-four millions; in 1881 it was seventy-one and a half millions, and in the thirty intervening years some twenty millions and a half of taxation had on balance been remitted. The load had been shifted but the burden on the 'animal' was indeed immense" (volume ii, page 300).

In other matters of finance Mr. Gladstone has equally failed; as for instance in regard to the national debt, succession duties and the Irish church. He stands out a notable instance, even in his own province of finance, of the frailty of leaders in politics and of the latent power, the *vis inertiae*, of the popular judgment, especially in any matter directly affecting the individual pocket. All this may be seen duly set out in Mr. Buxton's admirable and useful book. The name of Buxton is most honorably associated with the great emancipation of man from slavery to man. Mr. Sydney Buxton has proved in these pages the slavery of man to money; but to the thoughtful student it would seem that in this slavery there are redeeming features, and that emancipation is neither possible nor necessary.

GEORGE BADEN-POWELL.

Histoire et Diplomatie. Par le duc DE BROGLIE. Paris, Calmann Lévy, 1889.—8vo, xiii, 461 pp.

This volume contains a collection of essays and addresses on various topics in literature and history, diplomacy and politics. The seven years' war, the ministry of Foreign Affairs before and after the revolution, Christianity and French society, order and liberty in literature, and Richelieu and the absolute monarchy, are among the subjects discussed. Some of these papers were written years ago. The addresses are mostly recent in date, the latest being a discourse before the society of Diplomatic History, delivered on the 30th of May last.

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The general tone of the volume is that of a lament; nor is this at all strange. The name of the Duke de Broglie recalls the past glories of France, — the days of the monarchy and the empire, when the late duke was a leader in public affairs, and his son, the author of the present volume, was acquiring reputation in literature by his essays in the *Revue des deux mondes*. With the exception of the brief period of service of the latter as minister of Foreign Affairs and ambassador at London under the presidency of Thiers, it can hardly be said that the name of Broglie has any association with the new order of things in France. But from the time of Thiers to the days of the candidacy of General Boulanger, the change in France has not been inconsiderable. This change the author of the present volume views with the gravest apprehensions. In his preface, as well as in an address delivered before the Monarchical Union in 1887, he emphasizes the dangers of universal suffrage, and the manner in which it exposes the government to popular passion and caprice. Of such a system he argues that the candidacy of General Boulanger is the natural result; and that, although in the next drawing he may not obtain the prize which he promises himself, yet, if the lottery remains open, some one sooner or later will come who will be more fortunate. In respect to the position of the Catholic church, the author announces that he has seen no reason to alter the views expressed by him in the various writings in which he has attempted to reconcile the authority of the Pope with modern liberty. What these views are may be seen in the essay on Christianity and French society, written a number of years ago and republished in the present volume.

J. B. MOORE.

Éléments d'économie politique pure. Par LÉON WALRAS, professeur d'économie politique à l'Académie de Lausanne. Deuxième édition. Lausanne, F. Rouge (Paris, Guillaumin et C^ie^), 1889. — 8vo, xxiv, 523 pp.

The original edition of this work appeared in two parts, in the years 1874 and 1877. The new edition shows few changes of principle, but much rearrangement and expansion of details. It now forms by far the most complete and systematic work on the mathematical theory of political economy.

The underlying idea of this theory was developed independently by Jevons in England, Menger in Austria, and Walras in Switzerland. The essential differences between the three are less than they sometimes appear. "*Grenznutzen*" is exactly equivalent to "differential of utility" or "final utility," and "*rareté*" is so defined by Walras as to mean exactly the same thing. The difference is rather in the form and com-

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pleteness with which the theory is developed. Menger makes the least use of mathematics; Walras the most; Jevons occupies an intermediate position. As a result Walras' book is the most difficult for ordinary readers; but his logic is the most rigid, and he has carried out his deductions to cover important points which the others have entirely omitted. While Jevons clearly had priority in publishing the underlying ideas, Walras may still more clearly claim priority in the full development of a system.

The difference in arrangement between Walras and Jevons is very great. Jevons begins with analyzing the utility of different articles or different quantities of the same article to the individual, and thence deduces the conditions of exchange. Walras starts from the facts of exchange in a market, where each article is at once a supply of itself and a demand for something else. He explains the conditions of equilibrium under these circumstances, and in so doing is led to a "theorem of maximum satisfaction" and to an explanation to all intents identical with Jevons' postulates. The form of presentation of the quantities is also generally reversed. While Jevons represents amounts of any given article on the X axis, and treats value as a function of quantity, Walras generally treats price as the independent variable, to which supply and demand adapt themselves. Each method has its advantages; neither is wholly satisfactory. Walras can claim this advantage for his system, that he has proved his general results for an indefinite number of commodities far more completely than Jevons has done.

One point in Walras' proof of his general proposition seems open to criticism. It relates, not to the reasoning itself, but to an assumption as to business facts. He has analyzed a process of approximation, whereby a number of individual efforts will tend to produce such prices as will bring supply and demand of all articles more and more nearly into equilibrium; and he then says:

> Or ce tâtonnement est précisément celui qui se fait de lui-même, *sur le marché des produits*, sous le régime de la libre concurrence, *alors que les entrepreneurs affluent vers les entreprises ou s'en détournent* suivant qu'on y fait des bénéfices ou des pertes [page 241].

In this passage, a comparison of the phrases which I have italicized shows that the author confounds mercantile and industrial competition as completely as Ricardo himself might have done. If the two are not simultaneous, the whole proof loses its force. The general adjustment may be in the opposite direction from what the theory requires. Such is in fact often the case. In a large part of our modern industry the times of active investment of capital are times of advancing prices. True, the additional investment must soon produce a reaction; but this

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does not make Walras' account of the process correct. The capital movement and price movement must be simultaneous, or else the theory will be radically wrong. The equilibrium will become a wholly unstable one if the two are separated. Prices in good and bad years may on an average not vary far from cost of production; but the average is made up of widely divergent quantities, and the mercantile conditions, in industries involving large capital, favor such variations instead of preventing them.

ARTHUR T. HADLEY.

Der Natürliche Werth. Von Dr. FRIEDRICH VON WIESER, Professor an der Deutschen Universität in Prag. Wien, Alfred Hölder, 1889. — 8vo, xvi, 239 pp.

Economists who have been looking hopefully for a systematic development of the laws of value on the basis of Jevons' theory of utility and Menger's theory of subjective valuations, will open this book with interest. Its aim is avowedly an ambitious one. Professor Wieser himself describes it as an attempt to complete "the new theory" in the sense of extending it to the entire field of the phenomena of value. Unlike the author's former work, *Ueber den Ursprung und die Hauptgesetze des wirthschaftlichen Werthes*, it deals altogether with objective value, and thus meets one of the chief criticisms that have been made upon the Austrian school. The importance of such an attempt, if even approximately successful, is evident. Professor Jevons' exposition was cut short by his untimely death, and the fragment in the hands of Professor Foxwell is not yet published. The *Économie politique pure* of Professor Leon Walras is a systematic work, but it is readable only by those who enjoy an easy familiarity with the higher mathematics. Moreover, the Austrian point of view is sufficiently distinct to make a systematic work by a writer of that school highly desirable. Whether this point of view be acceptable to the reader or not, he will find it ably defended in Professor Wieser's pages, while the particular conclusions therefrom deduced are worked out with originality and precision.

It was a fundamental weakness of the English deductive economy that it postulated conditions that were found to be not true of primitive societies, and that could not be true of an ethically organized society from which certain forms of competition and the purely selfish economic man were banished. If the new deductive economy would be sounder than the old, it must construct a theory of value that will be true for any possible society; for the village community or the commercial metropolis, for the produce exchange or the kingdom of heaven. Professor Wieser has apprehended this necessity and has shaped his expo-

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sition in accordance with it. He claims that the new theory of value meets all requirements. This is the significance of his title. Natural value is the value that exists independently of commercial exchange. Market value is only a particular case of natural value. Natural value would exist, as our author repeatedly points out, in the objective values of land, labor, capital, rent, interest, *etc.*, in a purely communistic society. It follows that his incidental criticism of that socialistic theory which goes with the name of Marx, is radical and merciless.

To indicate in a paragraph the relation of Professor Wieser's conception of natural value to Jevons' theory of utility, is not an easy thing to do. Jevons could make nothing of the term value, and in his *Primer* he carefully avoided it. In the *Theory of Political Economy* he points out three common meanings of the word and gives what he understands to be their equivalents in terms of the theory of utility. Value in use is equivalent to the total utility of a given commodity. Esteem or intensity of desire, is the same thing as final degree of utility; and purchasing power or exchange value is simply ratio of exchange. Believing that the third meaning was the only one that could have any place in economics, Jevons failed to see in the second a meaning that is not only, for economic thought, generic, but one by which the whole existing terminology of economics could have been most easily brought into relations with the theory of utility. Degree of esteem is identical with degree of utility in the sense of being the subjective aspect of what may be otherwise regarded as an objective phenomenon. It is the conscious estimate of the final degree of utility considered as an objective fact. But if degree of utility can be thus estimated, total utility can be so estimated also. We may have not only degree of esteem but amount of esteem; or, substituting the word value, we may have degree of value, corresponding to degree of utility, and amount of value corresponding to total utility. There is no more confusion or equivocation lurking in one set of terms than in the other. Moreover, it is as easy to explain market value by degree and amount of value, considered as subjective estimates, as it is to deduce ratio of exchange from final degree of utility. Reconverted into objective phenomena by a social process — that is through a comparison of their respective wants and supplies by the individuals and groups of individuals composing society — subjective estimations become the objective values of commerce.

How near Jevons came to perceiving these truths and some of their implications, is shown in his discussion of an indeterminate problem of exchange, in which he foreshadows the whole Austrian theory of subjective values by using the illustration of a man willing to sell a house for £900 while another is willing to buy at £1100. It is the merit of the Austrian analysis that, in a good degree, it makes explicit what was only

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implicit in the thought of Jevons. Not that the Austrians have cleared up all the difficulties of the subject, or have always given the best expression to their views; but they have made a substantial beginning. Professor Wieser nowhere defines value in so many words as degree or amount of esteem, but that is what his conception reduces to. Starting from subjective estimations of utility his treatise is a development of their objective resultants. In one place he tersely expresses the underlying idea by saying that value is the estimation — or calculation — form of utility ("*der Werth ist die Rechen-form des Nutzens*"). This, at bottom, is a psychological proposition and as such it is unassailable. We cannot transcend our own mental processes. The economist can deal with utility only through the mediation of value.

In working out this conception of value in detail through the ramifications of economic phenomena, Professor Wieser adopts a plan of subdivision and arrangement very different from that to which students of English manuals are used. We see nothing of the partition into "production," "exchange," "distribution," *etc.*, but, instead, a scientific and orderly progression from the general to the special, and from cases of value that are relatively simple to those that are more complex, the successive factors of complication being taken up one by one. Thus, the doctrine of cost and the complex problems of the relation of cost to value, instead of standing at the threshold of the reader's progress, are reached only late in the discussion. In accordance with this general plan the book is divided into two parts, one dealing with value in private, the other in state, economy — *Privatwirthschaft* and *Staatswirthschaft*. In the former the exposition of the elementary theory of value is followed by the consideration of price and exchange value, and of the function of exchange value, in the objective sense, in political economy. That function of course is to serve as a means of control, as an automatic regulator of the production of goods in kind and quantity. Next in order, instead of going on at once to study distribution under its most specific aspects — rent, interest and wages — Professor Wieser develops in general outline a theory of the valuation of productive revenues and of the respective contributions made by the several co-operating factors to a common product. Such a theory grasps the central problem of a most difficult subject. Its elaboration not only brings the laws of distribution into co-ordination with those of production, but, by means of it, the whole discussion gains much in philosophic breadth; and when, later, the specific values of land, labor and capital are taken up, the principles governing them are clearly seen to be corollaries of general laws. The second part, of only twenty-four pages, is a brief discussion of the problems of state economy and of those fundamental laws of taxation that are immediately deducible from the author's conception of value.

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One or two points of doctrine may be mentioned briefly. In the theory of the valuation of productive contributions, Professor Wieser differs from Menger; in the theory of capital he takes issue with Böhm-Bawerk. Menger proposed to ascertain the value of the contribution made by any productive factor co-operating with others in creating a common product, by ascertaining the abatement that the product suffers when the factor in question is left out. Professor Wieser shows that this method gives as the sum of the values of all the contributions an amount larger than the value of the product. This is because the efficiency of each factor is heightened by the co-operation of all the others. To ascertain the contribution of any one factor we must have at hand enough cases of production with one or another factor left out to give us as many equations as we have unknown quantities. The opposite method, of estimating the total contribution of a factor by the productivity of its last taken increment, which was suggested by Thünen in connection with interest, and which has figured in recent American discussions of wages, is developed by Professor Wieser, as the reader would expect, into a general rule, holding good for all productive factors and for all forms of value.

Professor Böhm-Bawerk's *Positive Theorie des Kapitals* and the present volume appeared so nearly simultaneously that neither author could pass judgment on the latest views of the other. A comparison of their theories of capital and interest is therefore somewhat unsatisfactory. Professor Wieser, while acknowledging his great indebtedness to Böhm-Bawerk, maintains against the latter's criticism of Thünen that interest is a pure profit which capital creates while reproducing itself. In the course of the demonstration Böhm-Bawerk's favorite principle of the discounted present worth of future goods (which Professor Wieser accepts only for goods employed as capital, not for goods in general), is ingeniously turned against Böhm-Bawerk's own estimate of capital values. In handling the remaining cases of value — rent, the value of land, the value of labor, *etc.* — and in the discussion of cost, Professor Wieser is often original, always acute. Even where he adds nothing new to the sum of accepted theory, he gives to it all the fresh impress of his own critical thought. In this respect he does for the body of Austrian doctrine what Professor Sidgwick has done for the English.

That this noteworthy book is abstruse to a degree is no demerit. Its author maintains, and with truth, that though abstract it is thoroughly empirical in the best sense of the word. It is earnestly to be hoped that we may have no misunderstandings between this new deductive economy and the inductive-historical. They are "complementary goods," and equally necessary to the enlarging product of catholic economic thought.

F. H. GIDDINGS.

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English Wayfaring Life in the Middle Ages (XIV. Century). By J. J. JUSSERAND. Translated from the French by LUCY TOULMIN SMITH. New York and London, G. P. Putnam's Sons, 1889.—451 pp.

The first thing that strikes one about this book is its prettiness. Printer and publisher have done their best: type and paper are both worthy to accompany the admirably selected illustrations from manuscripts and photographs with which the volume is enriched. To those who know the work in its original French dress and yellow paper covers, the metamorphosis is astounding.

The next thing that occurs to us on turning over its pages is that it is an example of a kind of work, now for some reason or other rare in England, but not uncommon thirty or forty years ago. Perhaps the increasing accumulation of material of late years has deterred men from attempting that sort of popular or semi-popular description of the social life of the past based upon contemporary sources for which Knight's *Pictorial History* long served as a model. M. Jusserand differs from Knight's fellow-workers and imitators in having a wider range of learning, and a more vivacious style. Being a Frenchman, he dares not be dull. This is not an unmixed advantage. A desire to be sprightly leads him to occasionally introduce imaginative "purple patches," which are not particularly appropriate in the French, and are merely ludicrous in the English version; as for instance where, after describing the awkward carriages and bad roads of the fourteenth century, and remarking that a cavalier accompanying a lady in her chariot would have to speak somewhat loud, he winds up with these neat little sentences: "So trivial a necessity has always sufficed to break the charm of the most delicate thought; too many shocks agitate the flower, and when the knight presents it, it has already lost its perfumed pollen" (page 99).

M. Jusserand is excellent in details. Upon the subject he has chosen, the means of communication, and the various classes, — minstrels, messengers, merchants, outlaws, runaway peasants, wandering preachers and friars, pardoners and pilgrims, — that made use of them, he has brought together a considerable collection of interesting facts. But he is not so successful when he attempts to generalize, or to show the relation of the circumstances he describes to the problems of historical development. He thinks for instance that the number and importance of "wayfarers" was something peculiar to England. This, he tells us, explains why the peasant revolt of 1381 was more successful than the Jacquerie (page 272); why the people in England were then "united" enough "to snatch the necessary concessions at a fitting season," so that "a total overturn" such as the French revolution, was never needed (page 409). Now, of course, it is possible that wayfarers played a more important

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part in England than in France. But it is not antecedently probable; and M. Jusserand gives us absolutely no proof of his assertion. And indeed a mere glance into an ordinary text book, such as Rambaud's *Histoire de la civilisation française*, will probably convince most people that M. Jusserand has allowed a natural enthusiasm for his subject to run away with his judgment.

Then again, M. Jusserand is really too good a mediævalist to re-echo, as he does, the modern self-satisfied commonplaces about the arbitrariness and irrationality of all the legislation of the middle ages as to industry and commerce (see especially pages 235–241). The prohibition to export English money, for example, would be "noxious" enough *now*: but it does not follow that it was altogether noxious at a time when any state which had a higher standard of honesty in the matter of currency than its neighbors had enormous difficulties in keeping its own respectable currency in circulation. No one can read through the statutes of Edward III relating to money without seeing that their object was not, like that of the later mercantilists, merely to bring together within England as large a quantity as possible of the precious metals, but to preserve an honest and trustworthy coinage sufficient for the needs of internal trade. M. Jusserand might also have noticed that it was at any rate the intention of the government that merchants about to travel abroad should obtain foreign money in return for their English coins at the tables of exchange set up at the various ports, and that similarly foreign merchants arriving in England should there change their foreign for English money. It is however unnecessary to discuss the question in this place: the student of economic history will remember that it has been already dealt with by Professor Ochenkowski.

The same narrowness of view is apparent in what our author tells us of foreign merchants in England. He gives the impression of an arbitrary government, that did not know its own mind, and "protected and impeded" trade by turn. No doubt the state of things was bad enough to modern eyes. But if M. Jusserand had shown us, as he might have done, the royal government struggling throughout the period to secure better terms for alien traders; and if he had pointed out that even the restrictions imposed upon them by the town magistrates were part of the general guild system of the time, which had at any rate *some* good sides, the stupidity of our ancestors would hardly have seemed so dense as he would now lead us to fear.

In spite of these faults the book is a valuable contribution to our knowledge of the middle ages. It is to be hoped that if it reaches a second edition, the English version, which is on the whole very satisfactory, will be freed from some slight blemishes, in most cases un-English expressions due to literal translation.

W. J. ASHLEY.

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England in the Fifteenth Century. By the Rev. W. DENTON. London, George Bell and Sons, 1888.— 337 pp.

The fifteenth century is the most obscure in the social history of England since the Norman conquest, and it is perhaps the one to which modern investigators have given the least attention. Any serious attempt, therefore, to show us whether indeed it had a character of its own or was anything more than a continuation of the fourteenth century, calls for our especial attention. Mr. Denton's book is not undeserving of this attention: it is a storehouse of information, drawn for the most part from documents of the period. The introduction, which takes up a third part of the volume and deals with the four preceding centuries, does indeed sometimes go over ground already well-trodden; and the authorities referred to are not always the most adequate. But, take it all in all, the book is a very useful one; it is the product of painstaking industry, and it is marked by no little independence of judgment. It is to be regretted that Mr. Denton did not live to enjoy the success which his book has deservedly met with.

To the industrial and commercial activity of his period Mr. Denton scarcely alludes. It is England outside the towns that interests him;— the cultivation of the soil; the food, dress, houses of the countryfolk; the revenues of the lords of manors; the power of the great nobles. It is on this last-mentioned subject that he writes most vigorously, and his concluding chapter describes the baronial feuds which characterized the century more vividly, and with greater wealth of illustration, than any other account with which I am familiar. Bishop Stubbs, however, long ago pointed out the main features of the Lancastrian "want of governance"; so that here Mr. Denton had only to work along lines already indicated. What light of his own has our author to throw on the development of society, especially on that most important side of it, the break-up of the manorial system, which, there seems so much reason to think, took place about this time?

Well, this at least has to be said, that if Mr. Denton does not exactly *prove* anything before uncertain,— and I hardly think he does,—he gives a healthy shock to some of the ideas we are likely to be entertaining. He begins, it is true, by accepting Professor Rogers' version of the events of 1381,—the "attempt" of the landowners "to revert to personal services" from their tenants instead of money rents, and so forth, —a theory for which, as was pointed out in the preceding number of this QUARTERLY, no evidence has yet been adduced; and then we expect him to go on to tell us how halycon a time the first half of the next century was for the copyholder and laborer; for herein Mr. Rogers has been followed by writers of all parties, by Mr. Prothero as by Mr.

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Hyndman. But instead of this, Mr. Denton's tale is of sordid misery. The black death, he tells us, was but the first and most terrible of a long succession of pestilences throughout the next hundred and fifty years; "a sad monotony of suffering" (pages 103–105). The laborers' wages could barely keep body and soul together; and when corn did chance to be cheap, employers had the option by statute of paying in the cheapened commodity at the old rates, instead of in money (pages 213–222). I cannot say that Mr. Denton's narrative is convincing: the pestilences of the fifteenth century appear, from his own quotations, to have chiefly affected the towns; and his argument as to wages would seem to prove that in that respect at any rate the laborer was better off than he is to-day. Still, the very fact that after prolonged study of the time Mr. Denton feels obliged to paint his picture in such sombre colors, is one worth thinking over.

Mr. Denton recognizes clearly enough that the turning point in economic development was not the end of the fourteenth, but the end of the fifteenth century; and that it is to be found in the transition from tillage to pasture. Here again he maintains a position, novel so far as I am aware, which challenges our consideration. It is that "at the end of the fifteenth century, the fertility of the arable land of England was well nigh exhausted"; so that, selfish and cruel as it may have been, the change was beneficial and even necessary. "The chief part of the sixteenth century was one long fallow for the old exhausted arable lands." "The ground had the rest it needed" (pages 153–154). This "decline of agriculture" is witnessed to, says Mr. Denton, by the lowering of rents, by smaller crops, and by the less frequent use of marl (pages 147–150). But the evidence he adduces is very scanty; and of the diminished power of production, which is the most important of his assertions, he gives no proof at all. Still, the possibility is one which future students will do well to bear in mind.

It is a pity that with so much industry Mr. Denton was not able to contribute something more positive to the explanation of the agrarian revolution. The reason is this, — and here I am obliged to point to the one great defect of the book, — that Mr. Denton never really grasped the nature of the agricultural village community. He frequently refers to Mr. Seebohm's epoch-making work; and yet, describing the arable lands of a manor, he tells us that each of the two or three fields "were divided into strips generally a furlong in length," and "every tenant of the manor held *a strip* in each of these fields" (page 199). Either Mr. Seebohm's exposition of the nature of a yard-land was thrown away upon our author, or else the text and the notes were written at different times, and the text never properly revised. The same impression is created by Mr. Denton's constant use of the terms

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"farm," "farmer," and "agricultural laborer" (see *e.g.* pages 153, 171 220). In most of these passages, perhaps, some meaning can be assigned to the term not inconsistent with the circumstances of the time: in one place we may understand by "farmer" a substantial copyholder, in another the lessee of the demesne. Still, language such as this is sure to bring before the ordinary reader the picture of a modern farm, of modern farmers and modern laborers; and we cannot help thinking that this was what Mr. Denton himself had in his mind. The suspicion reaches something like conviction when we see the use he makes of the most significant piece of information at his disposal, and one not before printed. This is a letter addressed by the vicar of Quinton to the president of Magdalen college, Oxford, about the year 1490 (page 318). The college was the lord of the manor, or "town," as it is here called; and had recently leased it (giving probably immediate possession of the demesne, together with all their manorial rights over the rest of the land) to a "farmor," instead of dealing directly with the copyholders or other tenants, as they had previously been accustomed. They had now "one man to their tenant" instead of "the [old] tenants of the town." This "farmor," by means not specified, had got rid of many of the old tenants: "your housing," says the writer "goes down; twenty marks will not set up again that which is fallen within these four years." The consideration which influenced the college was, that the farmer paid a higher rent; and they were indisposed to restore the old state of things unless the small tenants as a body would agree to pay as much. The vicar protests against this: "Methink it is more meritory to support and succour a community than one man." If they, being divines, do a thing of this kind, it will attract unfavorable comment, and also be "an example to lay people to cast down towns." "I marvel greatly that ye stick so sore to make the tenants to give more than the other men have given before," considering how much greater are their expenses than those of a man "who keeps no household upon it, but brings all to the penny"; and he offers, if the college will agree to let the old tenants have the towns for a yearly rent of £30, to give to the president his gray horse and be himself responsible for the rent.

The general purport of the letter is absolutely clear: it is an attempt to maintain a condition of things that had recently been broken in upon. But Mr. Denton's imagination was so preoccupied by the social relations of our own day that he could see in this nothing but a philanthropic effort to promote "allotments" (page 246); even "our poor town" becomes "land near" the kindly vicar's "parish."

On minor defects it is not necessary to dwell; nor would it be fair to do so without also mentioning some of the many subjects whereon Mr. Denton has collected abundant and trustworthy information. Mr. Den-

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ton was wanting in that sort of imaginative power which enables a man to realize conditions remote from those around him, and the fruits of his labor are in consequence used to less advantage than they might have been. Yet the book will be a great help to all subsequent students of the period.

W. G. ASHLEY.

Die Entstehung des Agrarschutzes in England. Ein Versuch, von Dr. RICHARD FABER. Strassburg, Karl Trübner, 1888. — 8vo, viii, 173 pp.

Arthur Young has told us in his *Political Arithmetic* that the first step in breaking with the mediæval European agricultural and commercial policy was taken by England in 1670. The law 22 Charles II, c. 13 levied high duties on the importation of corn up to a certain price, and the following law of 1689 granted a premium on the exportation of corn up to a certain price. The other European countries on the other hand forbade the exportation of corn for more than a century, and sought to encourage its importation. What was the reason of this sudden change of policy on England's part? What were its results? What finally caused the opposition to and disappearance of this innovation? These are the questions which Dr. Faber has set himself to answer in the essay which was originally a doctor's dissertation, since revised and edited in the series of *Abhandlungen aus dem staatswissenschaftlichen Seminar* of Professors Knapp and Brentano (then of Strassburg).

During the twelfth and thirteenth centuries the controlling consideration was the fear of dearth — which for a long time denoted not scarcity but dearness. Agricultural production was localized; every town was dependent for its food on its immediate vicinity. Hence the prohibition of exportation, whether from province to province, or from country to country. England still followed the *Theuerungspolitik* or consumers' policy as we might call it. But a new era began with the attempt of the monarch to secure independent sources of revenue. The crown, in return for substantial considerations, commenced to grant licenses to export. A struggle ensued between this fiscal policy of the crown, and the consumers' policy of the people. It was a contest between export duties and prohibition. With the defeat of the crown at the close of the fourteenth century the consumers' policy triumphed, and exports were strictly prohibited. But now we notice a new point of view. Some of the maritime provinces had developed a considerable agricultural activity under the system of export licenses. The landowner now demanded freedom of export. And not only this, but the mercantilist element began to make its appearance and the landowner demanded protection, *i.e.* prohibition of imports when prices were low.

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The development was so slight, however, that this new policy had only a temporary success. The crown again obtained the ascendency and returned to the fiscal system of export duties. But with Elizabeth the crown, partly for military reasons, recognized the expediency of protecting and aiding the peasantry. The development of agriculture became a leading card in the royal game, especially as it was now seen that successful agriculture meant cheaper bread. Thus the mercantilist and the consumers' policy began to go hand in hand. And although under Charles I the fiscal system of export duties again came to the front for a time, the triumph of Parliament assured the adoption of the new economic policy — a product of mercantilism and the consumers' view. Prohibition and restriction of exportation ceased; exportation began to be favored, and importation frowned down, until under William III bounties were offered for exports and high duties imposed on imports. The system of agrarian protection began.

Thus far Dr. Faber takes us in the present essay. The facts are compiled with commendable industry, chiefly from well known authors and the rolls of Parliament, and the narrative flows clearly and smoothly. In several details Dr. Faber opposes, and it must be said with success, both Rogers and Schanz. At the close he gives a *résumé* of the development from 1689 to the repeal of the corn laws, — a period which he proposes to work up in detail together with Professor Brentano. The results will be published as a continuation of the present essay.

E. R. A. S.

Le dottrine finanziarie in Inghilterra tra la fine del secolo XVII *e la prima meta del* XVIII. Estratto del *Giornale degli Economisti*. Di G. RICCA-SALERNO, Bologna, 1888. — 8vo, 26 pp.

Eight years ago Professor Ricca-Salerno published in the *Reale Accademia dei Lincei* the large volume which still remains easily the best contribution to a history of the science of finance. I refer to his *Storia delle dottrine finanziarie in Italia*, which contains one chapter devoted to the history of the financial literature in other countries (book ii, chapter 4). The present essay is of slight importance compared with the former work, but as an earnest of what we hope is to come in the future from the gifted author the article deserves attention. Professor Ricca-Salerno examines the chief writers of the seventeenth and eighteenth centuries in England, mainly with regard to the discussion between the direct and the indirect tax advocates. A portion of the ground — *viz.* Walpole's great excise scheme of 1731 — had already been covered by Professor Leser in his admirable *Ein Accisestreit in England*, published at Heidelberg in 1879; but even for this period

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Professor Ricca-Salerno makes extracts from four pamphlets which are not to be found in Leser's work, and which are not mentioned in the bibliographies of McCulloch or Sinclair. Copious extracts are made from the works of Hobbes, Child, Petty, Vanderlint and others, while some attention is paid to the single-tax idea of Decker. For the eighteenth century had also its single-tax advocates, even if the single tax be not the physiocratic land-tax, but the house-tax of Decker. The history of the science of finance still remains to be written, but essays like those of Leser and Ricca-Salerno are doing much to penetrate some of the most obscure corners of the subject.

E. R. A. S.

Le Società cooperative di produzione. Contributo allo studio della questione operaia. Di UGO RABBENO. Opera premiata dal Reale Instituto Lombardo di Scienze e Lettere. Milano, Fratelli Dumolard Editori, 1889. — Large 8vo, xix, 531 pp.

Co-operation has been hotly discussed for years. Accounts of its progress have been published in a more or less full degree in well-nigh every prominent country. But no attempt had hitherto been made to give a comprehensive review of its history and actual condition, or to append to this review a scientific and critical estimate of its real position in the solution of the labor problem. This is what Professor Rabbeno of Bologna has endeavored to accomplish, not indeed for the subject of co-operation in general, but for what in reality is its most important and interesting division — co-operative production.

For some years past Professor Rabbeno has devoted himself to the study of the general subject, incited thereto by the advice and example of his former preceptor, Professor Cossa. Since 1885 he has published works on co-operation in Italy, in England and in the United States. These, however, dealt in great part with co-operative distribution. In the present volume he discusses exclusively the productive societies. The volume is divided into four parts. In the first part Professor Rabbeno deals with what he terms the spontaneous forms of co-operation in production, such as the Russian artels and the creameries or dairy farms in various countries. But to these he does not ascribe the true characteristics of modern industrial co-operation. The second part is by far the most bulky (pages 33–386). It busies itself with the history and actual condition of productive co-operative societies in the principal countries. For France Professor Rabbeno correctly denies that the inception of the co-operative societies can be traced to Buchez with his society of *bijoutiers en doré* in 1834, and his theoretical works. The author shows that although Buchez had some vague ideas on co-operation,

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his associations were founded on principles contrary to economic doctrine and to the tendency of human nature. To mention Buchez, the reactionary, in the same breath with Owen and Schulze-Delitsch, the apostles of liberty and progress, appears to our author a veritable profanation. And as an antidote to the Buchez cult in France, Professor Rabbeno's remarks are certainly valuable. The industrial co-operation of the present is due largely to Louis Blanc and his efforts in the February revolution. The history of the associations from 1848 to the present day is related admirably. For Signor Rabbeno is not a blind admirer, but a critical observer. And among the most interesting pages are those in which he gives an analysis of the failures, and the reasons for the comparatively insignificant successes. The other countries — England, Germany, Italy, Austria, Switzerland and the United States — are treated more cursorily; for in all these cases productive co-operation has been of minor importance as compared with co-operative consumption, building or banking. But the accounts are always clear, and the value of each section is greatly enhanced by the full bibliography (*fonti principali*), occasional extracts from the chief authorities, and remarkably detailed tables (*tavole sinottiche*) designed to illustrate the salient points of the narrative.

Part third discusses profit-sharing as a means of transition from the capitalistic to the co-operative regime in industrial undertakings. Herr Böhmert and Frommer form the chief authorities, although the recent work of Gilman is also mentioned. Professor Rabbeno's conclusion is that we must not hope for too much from this method. It depends too much on the good will of the employer to ever attain a commanding position in the industrial world. Profit-sharing he thinks may gradually penetrate into the domain of *la grande industria*, which must always remain closed to the initiative of the individual workmen. But the transformation will never be able to exceed the limits of a few "happy oases" in the desert of competitive strife.

By far the most important portion of the book is part fourth, where the author endeavors to discuss "the elements (*prime linee*) of a theory of co-operative production" (pages 421–524). He passes in review all the definitions and opinions hitherto advanced, and cannot agree entirely with either of the two chief views represented in English by Cairnes on the one hand, and by Rogers and Walker on the other. His own definition of co-operation is "collective management in exercising a function necessary for the members, and for them alone" (*l' esercizio collettivo dell' impresa, allo scopo di produrre quella funzione di cui i membri hanno bisogno, e per esse soltanto*). Now the function of the productive societies is to carry on the employment in its general sense, *i.e.* the union of the two elements, capital and labor, and their application to

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production. The essence of productive co-operation hence is declared by Rabbeno to be the exercise of the *entrepreneur* function by both labor and capital collectively for the common account. Professor Rabbeno would thus exclude from his "pure conception" all societies (1) which hire workmen, (2) which divide profit and loss among some of the members only, (3) in which only those who put in capital receive profits, (4) which pay only an interest on the capital invested. In other words there can be no productive co-operation in the strict scientific sense, unless the *entrepreneur* function (and its profits) is shared by both all the labor and all the capital required for production. While this definition is perhaps more strictly correct than that of President Walker, it must be confessed that exceedingly few examples of this pure productive co-operation are to be found. For most of the existing societies fall within the above four categories. Still Rabbeno claims that this does not weaken the force of his *tipo astratto* or *concetto scientifico* of productive co-operation.

An interesting chapter follows on the object and advantages of productive co-operation. Rabbeno discusses first the abstract conception, and then proves in detail how each of the four above classes fails to realize all the advantages, because of the departure from "pure principle." But he shows his caution and conservatism in opposing the exaggerated ideas of men like Lassalle, Buchez, *etc.*, who hope for entirely too much. In fact a long and important chapter is devoted to the discussion of the defects, difficulties and limits of productive co-operation. While Rabbeno does not join the chorus of chronic fault-finders like Leroy-Beaulieu, Cernuschi, Le Play, Thiers, *etc.*, he reviews all the criticisms yet made, finds some of them just, and himself points out new dangers and limits of activity. The general conclusion, drawn from both the theoretical discussion and the investigation of actual cases, is that productive co-operation offers incontestable advantages and is confronted by no insuperable obstacles; but that there must be no illusions; and that there exist definite limits which will vary in each case and country with the general conditions of society and the state of industrial activity. The elaboration of these points justifies the remark of the commission which awarded the prize, that the work "marks without doubt an important step in the progress of economic science."

The volume is marred by slovenly proof-reading of foreign words, as Frauchreich (page 102), Eizelnen Gewerbsweigen (pages 265 and 279), Jahresbericth (pages 259 and 271), Missoury (page 416), Produktifgenossenschaffen (page 9), Wolwerhampton (page 224), agricoltural and horticoltural (page 232), Sedley Tailor (page 240), Ameriscanischen (page 332), mecanics (pages 341 and 383), Spriengfield (page 377), Linn (page 381).

E. R. A. S.

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Un nouvel impôt sur le revenu. Mémoire qui a inspiré le projet du gouvernement relatif à la réforme de la contribution personnelle mobilière. Par Dr. GUSTAVE KOENIG. Paris, Guillaumin, 1887. — 12mo, lxiii, 195 pp.

Les réformes fiscales. Revolution pacifique par l'impôt sur les revenus. Système de M. JACQUES LORRAIN, premier lauréat, *etc.* Par A. RAYNAUD, avec une preface d'AUGUSTIN GALOPIN. Paris, Guillaumin, 1888. — viii, 195 pp.

The British Taxpayer and his Wrongs. Including an analysis of a typical year's imperial and local taxation, with remarks on the budget proposals of 26th March, 1888, and an appendix. By "FINANCE." London, Effingham, Wilson & Co., 1888. — 8vo, viii, 167 pp.

Die Reform der direkten Steuern: insbesondere die Einführung der Selbsteinschätzung in Preussen. Von L. HEINRICH. Zweite Auflage. Berlin, Carl Heymann's Verlag, 1889. — 8vo, iv, 89 pp.

Zur Reform der direkten Steuern in Preussen. Gegen die Selbstdeklaration. Von E. EYNERN. Barmen, Wiemann, 1889. — 8vo, 77 pp.

Bitter complaints about the modern American methods of taxation have become so common as almost to lead to the conclusion that we are little better than barbarians when compared with our older neighbors. It is a sorrowful satisfaction to be compelled to recognize that the discontent in almost every European country is scarcely if at all inferior to that prevalent in the United States. Everywhere we find more or less loud mutterings among the taxpayers and more or less serious criticisms on the part of the writers. The truth of the last fact can be easily seen from an examination of this latest batch of essays on financial subjects.

In France the discontent is of long standing. Almost every author on finance for the last twenty years has been calling attention to the lack of system and to the glaring inequalities in the practice of taxation. Ever since the war of 1870 repeated efforts have been made to supplement the direct taxes and to rid the country of some of the burdensome indirect taxes by the creation of an income tax. The advantage of such a policy had been hotly discussed by both sides. Very recently the strife has been renewed owing to the proposition of Dr. Koenig, whose *mémoire* was considered so important that the project recommended in its pages was adopted by M. Dauphin, then minister of finance, and

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introduced as a government measure. The opponents of the income tax here again were finally successful in killing the bill.

Dr. Koenig holds that the imposition of an income tax assessed on the declared income of individuals is practically impossible in France. He finds that the experience of England and Germany all point to this result; evasion has become a system, deceit the rule. A far better method appears to him to calculate the income by some outward sign, such as the house rent. The *contribution personnelle et mobilière* is already based on this principle. What Dr. Koenig proposes is simply to develop the principle. It is of course a well known fact that the lower we go in the social scale the higher is the proportion that house rent bears to total expenses or income. Rent is an increasing element of expense in proportion as expenses decrease. The poor spend relatively far more than the rich. Dr. Koenig therefore proposes a progressive rate of taxation assessed on the house rent, maintaining that this progressive rate will counterbalance the decreasing proportion that rent bears to expense. The plan is skilfully worked out; but it has this one fundamental defect, in common with all plans of taxing expense. What a man spends is no sure criterion of his income, or of his ability; the higher you go the more uncertain does the criterion become. The objection to the prevalent French system is that the wealthy escape their share of taxation; a tax on expense, even at a progressive rate, would not completely remove this objection, but on the other hand would result in more practical inequality than even an income tax levied by local assessors.

Dr. Koenig's plan has indeed the merit of doing away with all possible inquisitorial difficulties and of attaching itself to existing conditions; but it is at best a half-hearted measure, a mere temporizing expedient to be thrown as a sop to the radicals. A progressive house-rent tax is not and cannot be made to be an income tax. The essay is interesting however to all students of taxation as containing much valuable information. The allusions to America are not always felicitous.

In *Les réformes fiscales* another remedy is proposed. The title is somewhat misleading, as M. Raynaud is the member of the society for financial reform who offered the prize, while M. Lorrain is the author of the essay which took the prize. M. Lorrain's plan is very simple, being based likewise on taxation of expense. He would have the government abolish all existing taxes except the import and succession duties. In their stead the government is to defray all its expenses by circulating notes payable in three years. These notes (*bons du trésor*) while outstanding are subjected to a tax of ten centimes per day for every nundred francs, the tax being paid by the holder affixing stamps of the requisite amount to the notes. The idea is that these notes are to form the sole

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circulating medium (with the exception noted below); and that, since every one must use them, every one will pay a tax in proportion to his expense. To provide for the exigencies of trade, all checks, drafts, bills of exchange, *etc.* are subjected to a like tax. No note is to be issued under one hundred francs, so that the poor, who will continue to use small silver change, will be practically exempt. The sale of the stamps will defray all public expenses.

Such is the fantastic idea of M. Lorrain. Were it not that it received the prize of two thousand francs, and that the society for financial reform is circulating it extensively, it would not deserve notice here. Its absurdity is apparent. As a currency scheme, it approaches dangerously near the fiat-money craze. The government will have no check on its extravagance, and the notes must inevitably depreciate, like the assignats of old. As a tax scheme it is flagrantly inequitable. The tax will be paid not by the consumer, as is claimed, but by the debtor, whether he be producer or consumer. Even if paid by the consumer, it would be, like all taxes on consumption, regressive, or as the French say, *progressif à rebours*. Finally, it would fall harder on the working classes than all others, because it would bring about compulsory purchase of commodities in order to get rid of the note as soon as possible. To call such a tax *l'impôt sur les revenus* is a crass misnomer.

"Finance" in *The British Taxpayer and his Wrongs* complains, justly enough, that there is no science of taxation in England; and makes an attempt to supply the defect. Whether he is altogether successful is somewhat dubious, as he reserves his constructive theory and proposal of reform for a succeeding volume. In the present work we find nothing but indiscriminate censure. The customs duties severely affect the poorer classes; the rates are so excessive as to foster smuggling; the cost of collection is out of all proportion to the yield. The excise duties are a baleful tax of a most inquisitorial character, which results in adulteration and evasion, and is moreover both inequitable and costly. The license duties on liquors fall heaviest on smaller houses and create great monopolies in trade; those on traders and manufacturers are an undue drag on industry; those on establishments require an offensive espionage. The death duties are of a confiscatory nature, do not affect all lands, are of an unequal incidence and violate the sanctity of home. The other stamp duties are an insidious trammel on business. The land tax is no tax at all, but a mere redeemable rent charge. The house duty is unjust because it applies only to inhabited houses, and differentiates between dwellings and shops. The income tax is confronted by nine huge objections, and amounts to a confiscation of the earnings of industry and exertion. The tithes are mediæval. The *octroi* of London is obnoxious. The local rates are a chaos, and are especially in-

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equitable because they reach only a certain class of property and are levied not on owners but on occupiers.

It appears from the above that "Finance" is querulous and unscientific. It is easy to find fault, but indiscriminate censure is as barren of results as unquestioning praise. England's financial system is not so huge a monstrosity as we should be led to infer. The methods of the author would not seem to warrant great expectations for a true "science of taxation" in his forthcoming volume. His only acquaintance with German literature is found in an extract from von Stein that "indirect taxes on consumption are taxes on labor" — an unfortunate phrase which has met with almost universal condemnation among recent writers of authority, even in Germany itself.

As a contribution to the discussion of the actual state of the income tax in Germany, the two works of Heinrich and Eynern are exceedingly interesting. In *Die Reform der direkten Steuern*, Heinrich gives a good sketch of the history of the class and income tax in Prussia, and shows that as carried out at present it forms a caricature of an income tax. He goes so far as to call it a veritable *Lug und Trug System*, and holds that it can become endurable only through a system of self-assessment, as practised in many other German states. Eynern on the other hand in his *Zur Reform der direkten Steuern* offers examples to show that official appraisement is far preferable to self-assessment. The conclusion obviously is that under neither system does the income tax in Germany attain really valuable results. It would be well for the enthusiastic advocates of the income tax to study the facts and figures in these two German works. Their ardor will be apt to be seriously damped. On the other hand it must not be inferred that the income tax, seriously defective though it be, is not incomparably superior in almost every respect to our American personal property tax. A just comparison yet remains to be made.

Each of these five works is of a wider interest than its title implies. As expositions of the actual workings of different systems, they contribute to the formation of a broader basis for a comparative science of finance. From this point of view they deserve serious attention.

E. R. A. S.

The Elements of Vital Statistics. By ARTHUR NEWSHOLME, M.D. London, Swan Sonnenschein & Co., 1889. — xxiv, 326 pp.

England possesses perhaps the most valuable mass of purely "vital" statistics of any country in the world. For more than fifty years the statistical department of the registrar-general's office has been tabulating the returns of births, deaths and marriages of the people of England.

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Constant improvement has been made in the fulness and accuracy of these returns. Still further, in the supplements to the registrar-general's reports, skilled and expert statisticians like Dr. Farr and Dr. Ogle have worked out the results with a success equalled only by their scientific conscientiousness. This material, however, lies scattered through many volumes and is necessarily fragmentary, since each report deals primarily with the particular figures gathered at the time. The Sanitary Institute of Great Britain performed a good service when, as a memorial to Dr. Farr, it published in a single volume the most interesting extracts from his various reports. But this again was a disjointed collection, and the extracts frequently overlapped each other.

Dr. Newsholme has worked over the same material and presented the chief facts in a systematic form. He has done this in an extremely lucid and also interesting way. The ordinary student of statistics and of social science, as well as the medical practitioner with statistical tastes, will find here all that he needs about methods of registration, the various influences affecting births, deaths and marriages, the construction of life tables, *etc.*, besides many interesting suggestions as to statistical fallacies and the social conditions and tendencies revealed by the figures. It is rather astonishing to an American to learn that the book was prepared as "a guide to junior medical officers and to those preparing for the various sanitary examinations." That seems to imply a demand for statistical knowledge in England which is entirely unknown in this country.

In fact, one cannot read such a book as this (and the same is true of the German, French, and Italian handbooks) without a feeling of humiliation that the United States, which has done so much in statistical work, lags behind the whole world in the department of vital statistics. The belated "Mortality and Vital Statistics" of the Tenth Census show how impossible it is for a decennial enumeration to fulfil the task. Notwithstanding the elaborate character of that report and the ingenious efforts of so talented a man as Dr. Billings, the fact that the reported deaths are supposed to be thirty per cent, and the reported births fifteen per cent short of the actual numbers, must cast on the credibility of the deductions a cloud which no display of highly colored cartograms can remove. We cannot have vital statistics without a registration of births and deaths. It may be constitutionally impossible to establish a national registrar's office; but were there intelligence and scientific interest enough, each state might have its own, and valuable results would be had for each locality. Were they once established, scientific men would find some way of making the results comparable.

A single example will show how far behind we are in this matter. After the most careful consideration of the returns, Dr. Billings thinks

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that the death-rate in the United States in 1880 was not less than seventeen nor more than nineteen per thousand. That is the nearest we can get to a death-rate for the United States, and that opportunity comes only once in ten years. In England they have the death-rate for each year since 1838, for males and females, and by age classes. As a further instance of refinement take the comparison of the healthfulness of cities by means of their death-rates. Such comparison holds good only in case the population of different cities are of the same ages, for mortality is greater at some ages than at others. The English statisticians therefore correct the death-rates of the cities by reducing them all to a rate based on a population distributed by ages as the population of England is distributed. Then they can be compared. Dr. Newsholme justly derides the comparison of the weekly mortality bills of different cities — the highest point which we in this country have as yet reached in comparative vital statistics.

The many illustrations of the utility of vital statistics contained in this book ought to commend the English methods to so practical a nation as ours. The decrease in the English death-rate since the public health act came into operation in 1872, the mortality in different diseases, the hospital statistics, the effect of occupations on mortality, the comparative health of city and country, the duration of life, the time lost by sickness — all these are of practical interest and furnish the necessary preliminary knowledge for any steps in social reform or amelioration.

Dr. Newsholme ventures but once into the domain of economic theory and then with unfortunate results. He seems to think it necessary to combat the assertion that efforts to improve the public health will interfere with the survival of the fittest, and that it is a mistake to save the human race from the ravages of disease, vice and misery. To do this he attacks the Malthusian doctrine of population and contends that the supply of food among civilized men, instead of increasing in an arithmetical progression, really increases like compound interest. Now capital invested at three per cent doubles itself in twenty-four years. But the population of England, with the present excess of births over deaths, would double in sixty-three years, a much longer period than capital takes to double itself! It is surprising that the author did not take one more step and assert that as, in a civilized country like England, capital is always seeking investment and eagerly seeking it, the means of subsistence *must* double in twenty-four years and the condition of the population *must* become better and better. The fallacy lies in neglecting to consider whether capital has the opportunity to invest itself, and that carries us back to the doctrine of "diminishing returns from land." It is not necessary to overthrow Malthus in order to believe in the economic and social advantage of diminishing sickness

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and prolonging human life. Purely humanitarian notions would be a sufficient basis for the action even if the economic results were doubtful.

RICHMOND MAYO SMITH.

Preussisches Staatsrecht. Von CONRAD BORNHAK. Freiburg i. B., Akademische Verlagsbuchhandlung von J. C. B. Mohr (Paul Siebeck), 1889. — 2 vols., xii, 551, vii, 504 pp.

Mr. Bornhak is already known to the political student as the writer of several articles in the various German political reviews and as the author of several works on Prussian administration, the most important of which is the *Geschichte des preussischen Verwaltungsrechts*, published in 1884–1886 and reviewed in the POLITICAL SCIENCE QUARTERLY (volume ii, page 172). His previous studies therefore have specially qualified him for the more ambitious work he has just undertaken, *viz.* the presentation of the internal public law of Prussia.

According to the original plan, the *Preussisches Staatsrecht* was to be confined to two volumes; the first of which was to treat of the constitutional law, while the second was to be devoted to the administrative law. The author, however, has found that one volume offered insufficient space for the treatment of such an immense subject as administrative law, and in his second volume he sets forth only the general principles of Prussian administrative law, reserving for a third volume which is yet to appear the more detailed description of the various branches of administration.

As a whole the work is well done. While the book does not go into sufficient detail to replace the great works of von Rönne, it has the merit of presenting the material in a more philosophic spirit and in an infinitely more readable form. While von Rönne's book must be used almost exclusively as a book of reference, Mr. Bornhak's is so composed as to be interesting if not really easy reading. Naturally the volume devoted to administrative law is more deserving of praise than the volume treating of constitutional law. Mr. Bornhak's studies have been almost exclusively devoted to administration. He possesses in a higher degree the power of clear description than the powers of acute analysis and of delicate distinction which are so necessary for the constitutional writer. His deficiencies become rather painfully evident in his discussion of the question of sovereignty. The old problem of the whereabouts of sovereignty, which has given American publicists such trouble, cannot be said to have been satisfactorily solved by Mr. Bornhak for the German empire and the Prussian monarchy. The dual form of government which exists in Germany has led him — just as the dual form of government in the United States has led so many American

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writers and statesmen — to conclude that there is a composite state, each portion of which has its sphere of sovereignty. There is, however, this excuse for Mr. Bornhak's assumption: that while Prussia cannot of its own will amend the constitution, it can prevent amendments. He argues from this that Prussia is still sovereign, but that its sovereignty is legally limited. These two propositions of course are contradictory. No state is legally sovereign if its action can legally be limited. Governments, not states, are limited in their action.

The same confusion is evident when he comes to treat of the position of the Prussian crown. All of this portion of the book seems to be written to prove the correctness in law of King William's celebrated utterance which is put at the head of the work: "Die Herrscher Preussens empfangen ihre Krone von Gott." The expedients to which Mr. Bornhak is driven in order to prove that the crown is the Prussian state (so far as there is one) are oftentimes very remarkable. At one time he says absolutely that the king is the state. At another, that he may in the exercise of his sovereign rights be limited by other organs. That the king was the state was undoubtedly true before 1848; but since the establishment of the constitution the state is to be found in the union of king and legislature, since it requires the concurrent action of both to amend the constitution. The king as king has been reduced to the position of part of the government. As government, the king of course can be limited. If he were state he could not be limited, for sovereignty is not susceptible of legal limitation. If Mr. Bornhak could but seize this distinction between state and government, his whole book would be much clearer and his treatment of these mixed questions would be more valuable. This failure to distinguish between state and government — which is characteristic of almost all German publicists and is due no doubt to the fact that the German state is usually a peculiar organization of the government — detracts from the value of other portions of Mr. Bornhak's work. Starting out with the indisputable proposition that no one can legally possess rights against the state, Mr. Bornhak ends with the conclusion that no one can really have rights against the government, though he at the same time admits that the law often recognizes claims against the government which individuals may enforce by suit. If such claims are not rights, what are rights? Of course the state (*i.e.* the constitution-making and amending power) may refuse to recognize claims of individuals; but if it does recognize them, or if its constitutional representatives recognize them, then the individual has as complete a right over against the government as he has against any other individual.

Aside from this fundamental fault, Mr. Bornhak's book is excellent; and in this respect even it is little worse than other German books on

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public law. The administrative questions are especially well treated. The influence of Dr. Gneist, to whom the book is dedicated, is quite evident; and the work bears to Prussia somewhat the same relation which Dr. Gneist's works bear to England. It is, all in all, one of the best works we have on Prussian public law, especially on Prussian administrative law. The historical part of it is just full enough to give the reader a comprehension of Prussian development: and many questions hitherto very unsatisfactorily treated are discussed with precision and thoroughness. Especially to be mentioned are the discussion of the responsibility of Prussian ministers and the description of the reform of local government since 1808, which is the most important of the internal movements in Prussia in this century. It should be added that throughout the entire work Mr. Bornhak displays a strong conservative bias.

F. J. G.

Traité de la juridiction administrative et des recours contentieux. Tome second. Par E. LAFERRIÈRE, vice-president du Conseil d'État. Paris, Berger-Levrault et C^ie^. — 675 pp.

The first volume of this great work was noticed in the POLITICAL SCIENCE QUARTERLY, volume ii, page 709; the volume under consideration is the second and last. The first volume had greater interest to the foreign reader, on account of the fact that it was devoted to the general exposition of the judicial control over the administration and to a comparison of the different methods of forming this control in different countries. The second is of especial value to the French lawyer and political student, because it is devoted to a detailed description of the powers of control possessed by the various French administrative courts over the acts of French administrative officers. But it must not be supposed that this work, because it treats of essentially French law, is not of value or interest to the general student of administration. It is unquestionably the best work in existence on the subject of which it treats, and no one who is interested in administrative studies can afford to be without it. Probably the most interesting questions discussed are the judicial control over the acts of the administration relative to direct taxes and elections, and that power possessed by the Council of State (which is altogether peculiar to French law) to quash any act of any administrative authority on the ground that such authority has violated the law or exceeded its powers. The simple matter of the direct taxes gives rise every year to more than 300,000 appeals to the administrative courts — appeals not only against the illegality of the tax or the non-observance of the necessary legal forms, but also against the decision by the administration as to the value of property for the pur-

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poses of taxation. The purpose of the French legislation has been to grant to the individual taxpayer the widest possible freedom of appeal to the administrative courts. The costs of such appeal are reduced to a minimum, and all the steps in the procedure are so arranged as to lead to a speedy decision, and to furnish the appellant with few occasions for complaint. The same consideration of the interests of the individual is shown in the further right which the law grants him, to appeal to the active administrative officers for a reduction of (or complete exemption from) taxation for a given year on the ground of losses caused by the elements or by some other cause outside of human control, such as pestilence, drought, or by some visitation like the phylloxera. Such a power in the administration is hardly known at all in other systems of administrative law.

The same wide freedom of appeal is characteristic also of the matter of elections. Whereas with us it is practically only an opposing candidate who can call the decisions of returning officers into question, in France not only the candidates but also the officers of the administration or any elector may bring the matter before the administrative courts.

Again the power of the Council of State to annul the act of any administrative authority on the ground of violation of the law or excess of powers has been most liberally construed by the decisions of that body; indeed it may be said that this power has been developed through these decisions. The Council of State may annul an objectionable decision, not only on the ground of the incompetence of the authority making it, but also because such authority has used its power for a purpose not intended by the law. When it is considered that this power may be made use of, on the direct appeal of the individual, to annul an ordinance as well as an individual order, it will be seen that the judicial control over the administration possessed by the French administrative courts is infinitely wider and more complete than that possessed by our own courts over our administration. M. Laferrière can with perfect propriety claim that "it would be difficult to cite the instance of a state besides France where the control over the legality of the acts of the administration is so extended, where the means of appeal against abuse of power and mistakes of law by the administration are so numerous."

All those matters, interesting in themselves, are treated by M. Laferrière with that precision of thought, that logic in method and that charm of style which are so characteristic of the French mind. The reader cannot fail to rise from a perusal of *La juridiction administrative* with a sense of admiration for the French administrative genius and of gratitude to the man who has presented this important subject in such a masterly manner.

F. J. G.

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La mer territoriale au point de vue théorique et pratique. Par JOSEPH IMBART LATOUR, docteur en droit, avocat à la Cour d'Appel de Paris. Paris, A. Durand et Pedone-Lauriel, 1889. — 380 pp.

There is a widespread impression that when we have stated that the jurisdiction of a nation over waters adjacent to its coasts extends to a distance of three marine miles from the shore, and, in the case of waters *inter fauces terrae*, to the same distance from a line drawn from headland to headland, we have laid down an absolute rule which is firmly embedded in the principles of international law. This impression has been confirmed in the United States by the discussions of the Canadian fisheries question, in which the conventional phrase "three marine miles from the coasts, creeks, bays and harbors" has become familiar language. But, in reality, there is no rule open to greater exception and more likely to be the subject of modification in the future than that by which it is sought to confine the exercise of jurisdictional acts to a marine belt of three miles. Perels, in his great work on the admiralty, justifies the doctrine of the territoriality of adjacent waters on the three following grounds: (1) The security of a maritime state requires the possession of its marginal waters; (2) The surveillance of ships which enter those waters, whether passing through or stopping there, is demanded in order to guarantee the efficient police and the development of the political, commercial and financial interests of the bordering state; (3) The enjoyment of the possession of territorial waters serves to sustain the existence of the population on the coast. The mere statement of these grounds is sufficient to show that the distance to which a state may exercise jurisdictional acts over its marginal waters cannot be limited by an absolute rule of so narrow proportions as that of the three-mile belt.

Among the recent works in which this interesting matter has been discussed, the most comprehensive and instructive is that which forms the subject of the present review. This work, which is of value from a practical as well as from a theoretical point of view, was awarded the Bordin prize in 1888 by the French Academy of Moral and Political Science. It is divided into three parts. In the first part, the author discusses the right of the state over the territorial seas, its justification and philosophical origin, and its extent. In this relation, he treats of the subject of ports, harbors and roads, gulfs and bays, interior seas and those which communicate by a narrow outlet with the ocean. In the second part, he reviews each of the rights which are recognized as belonging to a state in its territorial waters, such as the right of fishery, of the coasting trade, of police jurisdiction, and of the regulation of ceremonial observances. In the third and last part, he discusses the

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peculiar conditions created by a state of war; treating in this relation the subjects of neutrality, blockade and the law of prize. He defines the territorial sea as the sea adjacent to the coasts, over which the bordering nation may from the shore employ its armed force, and thus exercise the power which is necessary to defend its territory and coasts, assure the safety of its inhabitants and guard its fiscal and commercial interests. In following out his discussion, however, the author observes a distinction (which seems necessary and proper) between the exercise by a nation of its protective power and the claim of exclusive possession. Thus it may be held that a nation is entitled in self-defence to forbid the commission of dangerous and destructive acts within such extent of sea as may be necessary for the protection of its coasts from injury. The reason originally given for the three-mile rule was that it measured the range of cannon-shot, and thus afforded an ample guaranty both for security and for protection. It is obvious that the rule is insufficient for that purpose to-day. In 1864, when the *Kearsarge* appeared off Cherbourg, France, in the pursuit of the *Alabama*, which was then lying in that harbor, the French minister of Foreign Affairs, when it became apparent that an engagement between the vessels would take place, informed Mr. Dayton, the minister of the United States, that a fight on or about the distance of three miles from the coast, in which case the coast would be within the destructive range of the guns, would be offensive to the dignity of France and could not be permitted.

Special rules are sometimes claimed for the protection of the revenues. Thus the Revised Statutes of the United States (section 2760) authorize the officers of revenue cutters to "go on board all vessels which arrive within the United States or within four leagues of the coast thereof, if bound for the United States"; to examine their papers and manifests; and to "remain on board of such vessels until they arrive at the port or place of their destination."

On the other hand, no general disposition has been manifested in recent years to restrict the right of all nations to take fish in the open sea. The three-mile rule, which defines the exclusive right of fishery on the Canadian coasts under the treaty between the United States and Great Britain of 1818, is found embodied in a convention made in 1882 between Great Britain, Germany, France, Belgium, Denmark and the Netherlands for the regulation of the fisheries in the North Sea. The same rule was adopted in conventions between France and Great Britain in 1839 and 1843 for the regulation of the fisheries in the Channel. It is also found in a law passed by the French legislature in 1885 for the exclusion of foreigners from fishing in the territorial waters of France and Algiers.

J. B. MOORE.

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RECORD OF POLITICAL EVENTS.

[From May 1 to November 1, 1889.]

DOMESTIC.

THE ADMINISTRATION. — The administration of President Harrison thus far has given great satisfaction to the members of his own party, but his political opponents have criticized severely what they claim to be his failure to carry out the pledges made by him in reference to removals and appointments to office. The event causing the greatest stir during the last six months has been the virtual **removal of the commissioner of pensions,** James Tanner, and the circumstances connected herewith. Mr. Tanner is a prominent and active member of the Grand Army of the Republic, and he was disposed to be extremely liberal in his pension policy. In addition he talked with imprudent freedom in regard to his plans for the conduct of his office and the general policy of the administration toward the soldiers. Among other things, he rerated a large number of pensioners, increasing the amount of their pensions without clear warrant of law and, in a considerable number of cases, paying them large amounts of arrears on the basis of the new rate. One of the most conspicuous cases was that of Senator Manderson, of Nebraska, to whom $4300 of arrears was thus declared to be due. A considerable number of officials connected with the pension bureau were among those rerated. The secretary of the Interior, Mr. Noble, did not approve of Commissioner Tanner's methods and early in September a crisis was reached, when the President had to choose between accepting Mr. Noble's resignation and compelling Mr. Tanner to resign. Mr. Tanner's enforced resignation was finally offered and accepted on September 11. Subsequently the reratings were rescinded. The office of commissioner of pensions was filled on October 19 by the appointment of General Green B. Raum, of Illinois, who made a fine record in the army and served acceptably at the head of the internal-revenue bureau. — The **other principal appointments** which have been made are the following: Minister to Germany, William Walter Phelps, of New Jersey; minister to Denmark, Clark E. Carr, of Illinois; minister to Turkey, Solomon Hirsch, of Oregon; minister to Rumania, Servia, and Greece, A. Louden Snowden, of Pennsylvania; minister to the Argentine Republic, John R. C. Pitkin, of Louisiana; minister to Paraguay and Uruguay, George Money, of Tennessee; minister to Bolivia, Thomas H. Anderson, of Ohio; minister to Hayti, Frederick Douglass, of the District of Columbia; minister to Hawaii, John L. Stevens, of Maine; civil-service commissioners, Theodore Roosevelt, of New York, and Hugh S. Thompson, of South Carolina; public printer, Frank W. Palmer, of Illinois; chief of the bureau of engraving and printing, William M. Meredith, of Illinois; member of the interstate-commerce commission, Wheelock G. Veazey, of Vermont; superin-

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tendent of the coast and geodetic survey, Thomas C. Mendenhall, of Indiana; commissioner of railroads, Horace A. Taylor, of Wisconsin; commissioner of education, William T. Harris, of Massachusetts; agent and consul-general at Cairo, Eugene Schuyler, of New York; first controller of the Treasury, Asa Matthews, of Illinois; second controller of the Treasury, B. F. Gilkerson, of Pennsylvania; commissioner of customs, S. B. Holliday, of Pennsylvania; first auditor of the Treasury, George B. Fisher, of Delaware; second auditor of the Treasury, Joab N. Patterson, of New Hampshire; third auditor of the Treasury, William H. Hart, of Indiana; solicitor-general, Orlow W. Chapman, of New York; assistant attorney-general, John B. Cotton, of Maine; commissioner of Indian affairs, Thomas J. Morgan, of Rhode Island; commissioner of the general land office, Lewis A. Groff, of Nebraska; director of the mint, Edward O. Leech, of the District of Columbia. Commodore Francis H. Ramsay was made chief of the bureau of navigation in the Navy department on October 19. The President appointed John Little as the American member of the commission to settle claims between the United States and Venezuela; the commissioners representing the two countries selected as the third member Samuel F. Phillips, who, however, declined to serve. — President Harrison visited Woodstock, Conn., on July 4. In August he went to Bar Harbor, Me., and on the 22d of that month he made an address at the laying of the corner-stone of a soldiers' and sailors' monument at Indianapolis, Ind. — The report of Henry C. Adams, statistician of the interstate-commerce commission, for the year ending June 30, showed that there were 149,901 miles of railway in the United States. The total amount of railway stocks, bonds, *etc.*, was $8,129,787,731. — Two reports were submitted to the secretary of the Interior by **the Utah commission** on September 27 and 28. The majority report was signed by G. I. Godfrey, A. P. Williams, R. S. Robertson and Alvin Saunders. It declared that polygamy is not at present openly practised except in a few remote and out-of-the-way places, but that the non-Mormon element is confident that plural marriages are solemnized privately. The Mormon papers still openly advocate polygamy. The commissioners say that Utah should not be admitted as a state, for should it be, it would not be long before the "Gentile element" would be driven out and the Mormon theocracy made supreme. They recommended that the term of imprisonment for unlawful cohabitation be extended to at least two years; that it be made a penal offence for any woman to enter into the marriage relation with any man knowing him to have an undivorced wife living; that the laws relating to immigration be so amended as to prevent the immigration of persons claiming that their religion justifies the practice of polygamy, and that the national constitution should be so amended as forever to prohibit the practice of polygamy. John A. McClernand submitted the minority report. He laid special emphasis on the necessity of a constitutional amendment prohibiting polygamy, under whatsoever guise, in the United States, but, as the present laws are working well, he would advise no further legislation at this time. — The fourth annual report of Carroll D. Wright, commissioner of labor, was issued in September. It is very elaborate and is devoted to the condition of working women in all large American cities, forming an exhaustive treatise on the subject.

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THE INTERNATIONAL AMERICAN CONFERENCE. — This conference, which was convened in accordance with a law approved by President Cleveland on May 24, 1888, was opened in Washington on October 2. Delegates from the following nations were present: Argentine Republic, Bolivia, Brazil, Chili, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Peru, San Salvador, the United States, Uruguay and Venezuela. The conference was called to consider measures that shall tend to preserve the peace and promote the prosperity of the several American states, measures looking toward the formation of an American customs union, the establishment of regular and frequent communication between all the countries concerned, the establishment of a uniform system of customs regulations, the adoption of a uniform system of weights and measures, the adoption of a common silver coin, arrangements for a definite plan of arbitration of all disputes and differences, *etc.* Invitations were sent to all the nations of North and South America and were accepted by all except Paraguay, Hayti and San Domingo. At the first meeting of the conference Secretary Blaine was elected president and John B. Henderson president *pro tem.*, and a committee was appointed to report a list of committees to consider the various subjects to be discussed. The delegates were formally welcomed in a graceful speech by Mr. Blaine. He said that the conference would tolerate no spirit of conquest, but would aim to cultivate an American sympathy as broad as both hemispheres, while forming "no selfish alliance against the older nations from whom we are proud to claim inheritance." He urged hearty co-operation, based on hearty confidence, between the American nations, and expressed a belief that standing armies should be unknown on both the American continents. The conference adjourned to meet on November 18. In the mean time the delegates are making a long excursion through various sections of this country in order to gain personal knowledge of its extent and resources.

THE INTERNATIONAL MARINE CONFERENCE. — The international marine conference, composed of representatives of the principal maritime nations of the world, called for the purpose of securing greater safety for life and property at sea, was opened in Washington on October 16. Delegates from the following nations were present: Austria-Hungary, Belgium, China, Denmark, France, Germany, Great Britain, Guatemala, Hawaii, Honduras, Italy, Japan, Mexico, Norway, Russia, Spain, Sweden, Siam, the Netherlands, the United States and Venezuela. Rear-Admiral Samuel R. Franklin, U.S.N., was elected president. A brief address of welcome was made by Secretary Blaine; a single sentence may be quoted as its keynote: "The spoken languages of the world will continue to be many, but necessity commands that the unspoken language of the sea should be one." The delegates were also formally presented to the President. At the time of the closing of this RECORD they are holding regular sessions, which are likely to continue for a number of weeks. The subjects for the conference to consider, as proposed by the delegates from the United States, are as follows: Marine signals, or other means of plainly indicating the direction in which vessels are moving in fog, mist, falling snow and thick weather, and, at night, rules for the prevention of collision, and rules of the road; regulations to determine the seaworthiness of vessels; draught to which vessels should be restricted

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when loaded; uniform regulations regarding the designating and marking of vessels; saving life and property from shipwreck; necessary qualifications for officers and seamen, including tests for sight and color-blindness; lanes for steamers on frequented routes; night signals for communicating information at sea; warnings of approaching storms; reporting, marking and removing dangerous wrecks and obstructions to navigation; notice of changes in lights, buoys and other day and night marks; a uniform system of buoys and beacons; the establishment of a permanent international marine commission.

THE CIVIL SERVICE. — President Harrison won universal praise for the appointments made by him on the civil-service commission. On May 7 the selection of Theodore Roosevelt, of New York, and Hugh S. Thompson, of South Carolina, as members of the commission was announced. Mr. Roosevelt had won a remarkable reputation for a young man by his activity in securing reform legislation for New York city when a member of the New York legislature. Mr. Thompson was nominated by President Cleveland in February to succeed Civil-Service-Commissioner Edgerton, but the nomination was not acted upon by the Senate. Ever since his appointment Mr. Roosevelt has been especially earnest in prosecuting the work of the commission and has been instrumental in securing many needed reforms and improvements. He has been the most active member of the commission, but apparently his efforts have been heartily seconded by his colleagues. — On May 25 the commission made an **important alteration in its rules** by providing that thereafter the list of "eligibles" for appointment to the government service and their standing should be made public. The purpose of this change was to remove political influence as far as possible from the operations of the civil-service law. In connection with this Commissioner Roosevelt said: "As far as we have power, we intend to have the law enforced with absolute honesty and without the least reference to the politics of the applicant. The commission wants to give the public confidence in the law, and it feels that the best way to bring about that result is to have the work of the commission perfectly open and above-board, and perfectly simple. Of course, while I believe implicitly that the merit system, as opposed to the old spoils system, has come to stay, I realize that many of our methods are more or less on trial even yet and the commission has to make experiments all the time; and it is absolutely inevitable that there should be occasional mistakes. When we find we have made such a mistake, we shall simply reverse our action." — The extension of the civil-service rules to the railway mail service took effect on May 1, but it was found later that some modifications in the rules were needed. Certain changes were recommended by the commission in July and were approved by the President. They permit the appointment of printers' employees as such without examination, and likewise of clerks employed exclusively as porters in handling mail matter in bulk, and also clerks employed exclusively on steamboats. — The **fifth annual report of the commission** was given to the public in July. It showed that substantial progress has been made in taking administrative offices out of the political arena. It set forth that the number of officers protected by civil-service rules was nearly 28,000. Of these something more than 8000 were in the departmental service, 2300 in the customs service, 1800 in the postal service, and 5300 in the railway

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mail service. The report also set at rest two objections sometimes urged against the present system of selecting appointees by competitive examinations. The figures showed that the graduates of the public schools succeed about as well as the graduates of colleges, the difference in favor of the college men being so slight as to be insignificant. It was also shown (in answer to the statement that the examinations make it easy for schoolboys to get into the service but exclude mature men of experience) that the average age of clerks who pass in the departmental service, for instance, is about twenty-eight years, and that, as a whole, mature men stand quite as good a chance in meeting the test examination as younger men recently out of school. — The annual meeting of the New York civil-service-reform association was held in New York on May 1. The principal feature was an elaborate address by George William Curtis, the president, which was read by Secretary Potts. Mr. Curtis arraigned President Harrison for not fulfilling his pledges in making appointments and removals, and for permitting members of Congress to exercise marked influence in the matter. In particular he criticised the displacement of Mr. Pearson, the postmaster at New York. "Not in one conspicuous instance, so far as I know," said Mr. Curtis, "has the President observed the spirit and purpose [of civil-service reform] or ordered them to be observed. I do not mean, of course, that he has appointed no honest and capable officers, but that he has not respected the principle that such officers in places which are not political should not be removed for political reasons; nor do I know a single member of the Cabinet, a single senator or representative in Congress, or, with very few honorable exceptions, like Theodore Roosevelt, of New York, a single recognized local leader of the dominant party who has publicly insisted that the declared policy of the party on this subject shall be respected." The association adopted resolutions declaring that the great change which was taking place in the civil service of the country for merely partisan reasons was a flagrant violation of pledges solemnly given, and that the interference of senators and representatives with the appointing power was in open contempt of the constitution. Mr. Curtis was re-elected president of the association. — The civil-service-reform league of the United States held its annual meeting in Philadelphia on October 1 and 2. Mr. Curtis, who was re-elected president, in his annual address again accused President Harrison and the Republican party of violating their solemn pledges, though he admitted that an admirable civil-service commission had been appointed. The resolutions adopted by the league declared that the execution of the law was "seriously endangered by the appointment, with few exceptions, as heads of offices within the classified service of men who are not in sympathy with the law or its purposes, but who are in many cases its open or secret enemies." Regret was expressed at the refusal of the President to extend the civil-service examinations to the census bureau, and the league again urged the repeal of the four-years' laws, "which are the fruitful source of political removals." The placing upon record of the reasons for removals was advocated.

LABOR TROUBLES. — There have been no strikes of great importance during the six months under consideration, and the relations of employers and employed show an encouraging improvement. The most significant movement in the labor world was the result of a conference held in Philadel-

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phia in July by representatives of the American Federation of Labor, the Knights of Labor, the Brotherhood of Railroad Firemen and the National Mutual-Aid Association of Railroad Switchmen. The conference sent out a circular to all officers of district assemblies and trades-unions with the hope of giving a new impetus to organization. The circular called upon all organizations of labor generally to "put forth renewed efforts to strengthen and solidify their ranks, and to leave nothing undone to make each society the power for good it is intended to be"; and upon all unorganized workingmen to "study the principles upon which organization is based, to meet and consult with members of labor societies in the various localities, with the object in view of ultimately bringing within the fold of labor organizations every worthy man and woman who toils in America." This comprehensive movement has the approval of Mr. Gompers, president of the Federation of Labor, Mr. Powderly, the leading spirit of the Knights of Labor, and other influential labor men.

THE INDIANS. — On June 10 the President appointed General Thomas J. Morgan as commissioner of Indian affairs. General Morgan served gallantly in the volunteer army during the war and subsequently devoted himself to educational work. At the time of his appointment he was president of the state normal school at Providence, R.I. He was recommended for the office by the Indian-Rights association and a number of kindred organizations. — In May the secretary of the Interior directed that a letter of instruction should accompany each commission to an Indian agent. The letter said that sobriety and integrity must mark the conduct of every one connected or associated directly or indirectly with the agencies; that an improved condition in the affairs of the agencies would be expected within a reasonable time, and that the education and proper training of the Indian children and the agricultural and other industrial pursuits of the adult Indians must receive constant and careful attention. — Secretary Noble set forth his **Indian policy** in a letter which was published on July 27. He said: "My purpose is to hold the balance even between the white man and the Indian, and to secure justice for both. I think the Indian has been greatly wronged beyond any necessity for the white man's entire prosperity. I think, upon the other hand, that the Indians have been played upon beyond what is necessary, and if I can secure the great boon of justice to all I shall have discharged my duty to the satisfaction of myself, and, I hope, of my country." — The negotiations looking to the opening of one-half of the great **Sioux reservation** were brought to a successful issue on August 5, when the requisite number of signatures was secured. The amount of land to be thrown open to white settlers is 11,000,000 acres. It will be disposed of to actual settlers on the following terms: $1.25 per acre for all lands taken within the first three years after the act takes effect; 75 cents per acre for all disposed of in the succeeding two years, and 50 cents per acre for the residue. In the course of the negotiations with the Sioux General Crook told them that, unless they accepted the treaty, their land would probably be taken from them. He assured them that they were getting the best terms that would ever be offered them, and if they did not accept they would not get more than had been offered a year before. — Commissioner Morgan received a report on July 30 from a special agent who was sent out to

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allot lands in severalty to the Indians on the Devil's Lake reservation in northern Dakota, to the effect that the Indians refused to accept the allotments; they alleged that they had not been fairly treated by the government and that 64,000 acres had been taken from them for which they should receive pay. There are about 1000 of these Indians and they occupy a reservation containing some 166,400 acres. — An agreement was made toward the end of July with the Chippewa Indians for the opening of the White Earth reservation. This will permit 3,000,000 acres to be settled by white men. Similar negotiations were made with other tribes of the Chippewas. — New instructions were issued by Commissioner Morgan early in August to special Indian agents. He said among other things: "Hereafter when inspecting Indian agencies you will carefully ascertain and report as to the general reputation of such trader for honesty, fair dealing with the Indians and good influence among them. You will also report specifically as to the quality and sufficiency of the stock of goods kept by the trader; whether he sells intoxicating liquor under any disguise, or arms or fixed ammunition, or trades with the Indians for goods furnished by the Government, or in any way violates the letter or spirit of sections 23, 31 and 33, relating to the above; whether his store is kept open on Sunday; whether it is used as a resort for loafers, and whether gambling, demoralizing dances or any other practice or amusements hurtful to the Indians are allowed upon the premises." — The annual conference of friends of the Indian at Lake Mohonk took place on October 3 and 4. Commissioner Morgan was present and presented an important paper on Indian education. He urged that ample provision should be made for the education of the entire mass of Indian children and youth. There was considerable debate on the question of government and contract schools, *i.e.* schools established by religious bodies and receiving government aid. The platform adopted by the conference indorsed the principles laid down in General Morgan's paper, and provided for the appointment of a committee to co-operate with the commissioner in preparing such a system as shall best promote the universal and compulsory education of all Indian children. It expressed a "conviction of the fitness and necessity of separating absolutely the appointments to office [in the Indian bureau] from the mutations of parties." The condition of the Indian reservations in the state of New York was declared to be not only unsatisfactory but positively bad. — On October 31 Commissioner Morgan's plan for the education of Indian children was published. The idea is, substantially, to apply the public-school system to the Indian youth of school age. He proposes to have day schools, primary or home schools, grammar schools and high schools. The system is to be non-partisan and non-sectarian, and teachers are to be employed and dismissed solely on the basis of efficiency or the opposite. It is intended to organize perhaps twenty-five grammar schools, fifty home schools and enough day or camp schools to reach all who cannot be brought into the boarding-schools.

COURT DECISIONS AND TRIALS. — The supreme court of the United States rendered its decision in reference to the Chinese-Exclusion act on May 13. The constitutionality of the act was affirmed. — On the same day the supreme court rendered what is believed to be a final decision in the famous case of the city of New Orleans against the administratrix of the estate

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of Myra Clark Gaines, giving judgment against the city for over half a million dollars. This case was probably the most interesting, the hardest contested and the most prolonged litigation in the history of the country. It had been before the supreme court five times before this last decision was rendered. — The civil district court of New Orleans rendered an important decision against the cotton-seed-oil trust on June 21. It enjoined the trust from doing any act whatsoever within the state of Louisiana, from entering into contracts or obligations of any kind, and from buying, selling, exchanging or dealing in property rights or credits within the state. — The new trial granted by the court of appeals to ex-Alderman Arthur J. McQuade, of New York, who was once convicted of bribery and sent to the state-prison, took place at Ballston Spa, Saratoga County (to which a change of venue had been ordered), in July. It resulted, on the 19th, in a verdict of not guilty. The district attorney of New York city, John R. Fellows, announced immediately afterwards that he would bring no more of the notorious bribery cases to trial, as he had become convinced that it was impossible to secure a conviction. — The new ballot law for Tennessee, passed by the last legislature, has been declared unconstitutional by the chancery court at Knoxville, because it fails to provide for voting by illiterates and thereby really prescribes an educational qualification. — County-Judge Day, of Auburn, New York, rendered a decision on October 9 upholding the constitutionality of the law providing for the execution of murderers by electricity.

TEMPERANCE REFORM. — As was expected when the last RECORD closed, Governor Hill, of New York, vetoed the high-license bill passed by the legislature of that state. He also vetoed the liquor-tax bill, which imposed a tax on all places licensed to sell liquors of any kind. These two acts working in unison, it was generally conceded by temperance reformers, would have constituted a very effective measure of restrictive legislation. The governor's reasons for vetoing them were similar to those advanced by him a year previously. — Internal-Revenue-Collector Webster, of Iowa, stated in May that the prohibitory law increased the sale of liquor in that state; during the year he had issued 232 more liquor licenses than in the previous year. — The supreme court of Pennsylvania decided in June that license courts had no power to refuse licenses to brewers, wholesale liquor-dealers and bottlers if they were of good moral character and temperate, and were American citizens. The courts, however, are vested with wide discretion in granting or refusing licenses to retail dealers. — A prohibitory amendment to the constitution of Pennsylvania was rejected by popular vote on June 18. — In Rhode Island the prohibitory amendment was re-submitted to the people in accordance with the action of the legislature in March and was repealed by a decisive vote. The duty of framing a new liquor law fell upon the legislature elected in April. The new law was adopted on August 1. The wholesale dealers' fees are not less than $500 or more than $1000; for retail licenses in Providence the fee is $400; in other cities, $350; in towns of between 6000 and 18,000, $300; in smaller towns, from $200 to $300. The penalties for violations of the law range from $20 and costs and ten days in jail to $100 and costs and six months in jail. There is no restriction as to the number and location of licensed places, except that a majority of the owners and

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occupants of property within 200 feet of a proposed saloon may prevent the issue of a license thereto. The Republican members of the legislature tried to pass a much more stringent law, but the Democrats, who were in a majority in the lower house, would not consent. The liquor question is accordingly likely to be an issue in the next state election. — A vote was taken on the proposed prohibitory amendment to the constitution of Connecticut on October 7, and the amendment was rejected by a majority of nearly 30,000. — At the elections in the new states in October prohibition was defeated in Washington, but was successful in both North and South Dakota.

STATE ELECTIONS. — Elections in the four new states in the northwest took place on October 8. Constitutional conventions had been held during the summer, and the constitutions prepared thereat were submitted to the people and adopted. The Republicans were successful in all the states, except that the Democratic candidate for governor in Montana was elected. In North and South Dakota and Washington the Republican victory was overwhelming. In Montana the election was close and for a time the result seemed to be in doubt. These elections assure the sending of eight Republican senators and five Republican representatives to Congress.

STATE LEGISLATION. — The ballot-reform bill passed by the New York legislature was vetoed by Governor Hill on May 13. He contended that it was clumsy and impracticable. The governor's hostility to the Australian method of voting, which he has condemned as a "mongrel foreign system," is thoroughly established. — The election-reform bill which was passed by the legislature of Missouri became a law by the addition of the governor's signature on May 18. — A secret-ballot law was passed by the Connecticut legislature. It does not provide for the printing of ballots by the state, but voters are compelled to enter a secret apartment and enclose their ballots in an envelope. The law was put in practice at the elections in October and was found to work satisfactorily. The same is true of the ballot-reform law of Montana, which embodies all the essential principles of the Australian system.

OBITUARY. — General William Selby Harney, the oldest officer of the United States army, May 9; Henry A. Foster, formerly United States senator from New York, May 11; Allen Thorndike Rice, recently appointed United States minister to Russia, May 16; General Simon Cameron, secretary of War under President Lincoln and for many years United States senator from Pennsylvania, June 26; Miss Maria Mitchell, the astronomer, June 28; Theodore Dwight Woolsey, D.D., LL.D., ex-president of Yale College, July 1; E. H. Rollins, formerly United States senator from New Hampshire, July 31; Elias Loomis, professor of natural history and astronomy in Yale University, August 15; John C. Brown, ex-governor of Tennessee, August 17; Henry Shaw, well known as a philanthropist and a liberal benefactor of St. Louis, August 25; Samuel Austin Allibone, LL.D., September 21; Samuel S. Cox, for thirty years a member of Congress from Ohio and New York, ex-minister of the United States to Turkey, and well known as a humorist and writer, September 10; General Daniel Harvey Hill, September 25; General Samuel Davis Sturgis, September 28; John A. Martin, ex-governor of Kansas, October 2; General John F. Hartranft, formerly governor of Pennsylvania, October 17.

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FOREIGN.

GREAT BRITAIN. — Parliament. The engagement of Princess Louise of Wales, eldest daughter of the Prince of Wales, to the Earl of Fife (subsequently created Duke of Fife), was announced in June, and the marriage took place on June 27. Meanwhile an animated debate took place in Parliament on the question of further royal grants. The committee appointed to consider the matter reported on July 22, recommending that £9000 be added to the quarterly grant of the Prince of Wales. The report maintained the right of the Queen to ask Parliament to make further provision for her grandchildren, but advised that at the proper time a law be passed providing that future sovereigns should have no claim to parliamentary provision for their grandchildren. A keen party struggle ensued. The opposition was voiced by Mr. Labouchère, who moved the rejection of the report and the adoption of an address to the Queen declaring that the sums already voted by Parliament for the royal family should be amply sufficient for all their proper purposes. This motion was rejected by a vote of 398 to 116, the majority consisting of 252 Conservatives, 54 Unionists, and 92 Gladstonians and Parnellites. Mr. Gladstone, Mr. Morley, Sir William Vernon Harcourt, Mr. Parnell and Mr. O'Brien voted with the majority. Mr. Morley then moved an amendment declaring that the House was unwilling to increase the burdens of the people without assurance that no further claims would be made for younger members of the royal family. This was defeated by a vote of 355 to 134, Mr. Gladstone, the Parnellites, *etc.*, voting with the Government. The Royal-Grants bill was finally passed on August 5. — The Government escaped defeat in August by the slender margin of four votes on the Tithes bill. This bill held tenants or occupiers responsible for the tithe-rent charge. The opposition, re-enforced by a considerable number of Unionists, supported an amendment offered by a Conservative making the landlord instead of the tenant liable for the payment of tithes. The amendment was then suddenly accepted by the ministry, whereupon the Liberals insisted on further debate, the outcome of which was that the bill was withdrawn and Mr. Smith, the government leader, announced that no new Tithes bill would be introduced. The skirmish on the part of the Liberals was conducted by Sir William Vernon Harcourt. — Attacks upon the government's Irish policy were made toward the end of August. On the 21st Mr. Sexton moved to reduce the appropriation for the Irish office by the amount of Mr. Balfour's salary. The motion was rejected by 112 to 83. On the 23d, the treatment of Irish political prisoners was brought up. Mr. Parnell said that these prisoners were half-starved, that many of the prisons were in bad sanitary condition, and that Mr. Balfour had been guilty of criminal neglect. Mr. Balfour defended his course, and said that the rate of mortality in the Irish prisons was lower than in the English prisons. The prisons vote was adopted — 113 to 69. — The House of Lords rejected the Deceased-Wife's-Sister bill on May 9, by a vote of 147 to 120. — The bill providing for additional naval defences passed the House of Commons on May 20, by a vote of 183 to 101. — Parliament was prorogued on August 30 until November 16. The Queen's speech contemplated unbroken European peace, spoke of the conference at Berlin on Samoan

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affairs, referred to the proposed conference at Brussels to consider the slave-trade, and incidentally alluded to the "gradual suppression of disorder in Ireland." — **The Parnell Commission.** A sensation was caused in the proceedings before the Parnell Commission when, on July 16, Mr. Parnell's counsel announced that they had been instructed no longer to represent him before the commission. Counsel for other members of Parliament against whom charges had been made also withdrew from the case. After the counsel had retired, the presiding justice, Sir James Hannen, said that the scope of the inquiry would not be altered by the action just taken. On July 23, all the evidence having been given, the commission adjourned to October 24. When it reassembled on that date, Joseph Biggar, M.P. for West Cavan, and Mr. Davitt, each spoke in his own behalf; Mr. Davitt's address continued for several days, and he made an earnest defence of the Land League and the general policy of the Irish Nationalists. On October 31, Sir Henry James began his address in behalf of the London *Times*. The subscriptions to meet the expenses of Mr. Parnell before the commission amounted to £41,000 — sufficient to defray all the legal costs on the Irish side. — The Earl of Zetland accepted the viceroyship of Ireland in May. — At by-elections in Peterborough, Elgin and Nairn, and the north division of Buckinghamshire, on October 7, 9 and 12, gains were made by the Gladstonian Liberals. The general tendency of the by-elections has been in favor of the Gladstonians, but at Brighton on October 25 the Conservatives elected their candidate by a reduced majority, though the Liberals were confident of success. Mr. Balfour, in a speech at Manchester on October 19, denied that home rule was the real motive power in deciding the recent elections; the Gladstonian successes, he declared, were due to socialistic agitation, since the Irish tenants wanted home rule in order to get power to appropriate somebody's property. — Mr. Gladstone made a notable speech at Southport on October 23, in which he dwelt at length on Irish grievances. He said that the necessity of the continued proclaiming of new districts was evidence of the failure of the coercion policy. It had been announced that the Liberal leader would in this speech outline his policy for the future; but he said that he could say nothing regarding the future beyond what was already known. — After the adjournment of Parliament, Mr. Balfour proposed the establishment of a Catholic university in Ireland. The proposal was denounced by the members of the opposition as a scheme for the division of the Irish vote. Mr. Balfour subsequently wrote a letter in which he said that no endowment for the institution was contemplated by the government. — **A great strike** took place in London in August. It began with the dock laborers and spread to the sailors, firemen, carmen, iron-workers, gas-stokers, *etc.*, until the number of men on strike was estimated at 150,000. The men demanded twelve instead of ten cents an hour, a minimum hiring of four hours and the abolition of piece-work. The strike lasted about a month, during which the strikers made many demonstrations. There was no great violence or disorder. Some workmen who took the places of the strikers were assaulted, and in one of the affrays a striker was killed by the police. The strikers were led by John Burns, a well-known labor agitator. During the strike strenuous efforts were make to bring about a settlement, and in these Cardinal Manning took an active part. The companies finally conceded the demands of the men.

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AFFAIRS IN IRELAND. — The most important event in connection with Ireland has been the formation of the **Irish Tenants' Defence League.** This action was taken on the ground that it was "imperatively necessary that the tenant farmers in Ireland combine for self-defence against their attempted extermination by the landlord conspiracy." The object of the league was stated to be to counteract by legal means all combinations of landlords used to exact excessive rents, to extort unjust arrears, to impose inequitable terms of purchase, to stimulate eviction or in any way to destroy or imperil the security of tenants in their holdings. Tenants throughout Ireland were invited to contribute to the defence fund in fixed proportion to the poor-law valuation holdings. The league agreed to furnish legal advice to tenants when needed, and promised to inform the public of the proceedings and aims of the combinations of landlords in Ireland and to devote particular care to contested by-elections. The affairs of the league are to be directed by a council of fifteen members. Messrs. Davitt, Biggar, Healy and Sullivan were elected treasurers *pro tem.* The foregoing action was taken at a meeting of the Parnellite members of Parliament held on July 22. In reference to the matter Mr. Parnell wrote to Mr. Sexton in October advising that the movement be limited to defensive action. He urged that special attention be given to these points: First, the duty of protecting tenants against the landlords' conspiracy, thus insuring to the tenants the benefits which Parliament intended; second, the assertion of the rights of freedom of speech and of public meeting; third, a vindication of the rights of tenants to the same facilities for combining and organizing that have been secured to English workmen by trades-union enactments. — In spite of the government's proclamation forbidding the holding of a nationalist meeting at Cork on June 30, meetings were held in several places in that city and its vicinity, and as a result William O'Brien and James Gilhooly, members of Parliament, were arrested. They were tried and convicted on August 26, O'Brien being sentenced to two months' and Gilhooly to six weeks' imprisonment. The latter appealed and was released on bail. O'Brien went to jail, where he was soon reported to be seriously ill. — In May Mr. O'Brien began an action against Lord Salisbury for libel on the ground that the prime minister had charged him with advocating the murder and robbery of men taking farms from which the tenants had been evicted. On the trial of the case in July the jury rendered a verdict in favor of Lord Salisbury. — The freedom of the city of Edinburgh was conferred on Mr. Parnell on July 20. The Irish leader received a warm welcome. He made two speeches, in which he virtually said that he would accept Mr. Gladstone's scheme of home rule as clearing off all the old scores between England and Ireland. — William H. K. Redmond, M.P. for North Fermanagh, was in September convicted of offences under the Crimes act and sentenced to three months' imprisonment. — The trial of Father McFadden and others accused of participation in the murder of Police-Inspector Martin at Gweedore in February was begun on October 17. In the case of McFadden a plea of guilty to the charge of obstructing the police was accepted, and he was allowed to go at large on his own recognizance. Several of the prisoners were found guilty of manslaughter and sentenced to penal servitude.

CANADA AND THE COLONIES. — The **Canadian** Parliament was

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prorogued on May 2. In his speech the governor-general called attention to the liberal provision made for extending the railway facilities of the dominion and increasing their efficiency, to the amendment of the laws relating to copyrights, to the provisions for greater economy and efficiency in the postal service and to the laws increasing the safeguards of life and property on ships. In October the British government drew the attention of the government at Ottawa to the danger that threatens the friendly and treaty relations between Great Britain and China unless the Chinese-Restriction act passed by the Dominion Parliament in 1885 should be modified. The desire was expressed that steps might be taken at the next session of Parliament to remove the cause of alarm. The report was circulated in October that the British government had refused to give its approval to the Weldon Extradition act, which was passed in April and provided for the extradition of embezzlers and the like. Subsequently it appeared that no action had been taken by the Home government, the matter being still under advisement. — The resignation of Sir H. G. R. Robinson as governor of the **Cape of Good Hope** was accepted in June, and Sir Henry Brougham Loch, governor of Victoria, was appointed to that post. The Earl of Hopetoun succeeded to the governorship of **Victoria**. — It was announced on June 24 that the **South Australian** ministry had resigned. — A movement, led by Sir Henry Parkes, premier of New South Wales, has been set on foot for the formation of a federal union of the Australian colonies.

THE PEACE OF EUROPE. — The peace of Europe has apparently been menaced more than once in the past six months. Nevertheless the attitude of the great powers is such as seemingly to make a general European war a very remote probability. Russian troops have been concentrated on the German frontier and there has been an increase in the railway facilities between interior Russia and the western frontiers of the country. Bismarck is believed to be promoting an arrangement whereby England and Turkey shall virtually agree to second the purposes of the triple alliance, consisting of Germany, Austria and Italy. — In midsummer a serious question arose because of complaints that socialists were allowed too much freedom in Switzerland, and Germany declared that the question of the neutrality of Switzerland would need to be considered by the powers if that country continued to permit revolutionists to threaten the internal peace and security of the German empire. Switzerland resented the menace made by Bismarck and the matter was allowed to drop, although in July Germany informed Switzerland that the treaty between the two governments regulating the settlement of foreigners would not be renewed; it will therefore expire at the end of 1890. — In reply to a question in the British House of Commons. on July 19, Sir James Fergusson, parliamentary secretary of the Foreign office, stated that in the event of a war between Italy and France the action of the British government would be guided by circumstances, and that England was under no engagement fettering her liberty.

FRANCE. — During most of the period under consideration General Boulanger, whose trial had been begun when the last RECORD closed and who had fled to London, has been the centre of interest to many Frenchmen. — At Angoulême on June 9 a Boulangist meeting was prohibited by the author-

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ities, and MM. Déroulède, Laguerre, Laisant, Richard and others were arrested for resisting the authorities. The trial resulted in the conviction of Déroulède for rioting and of Laguerre for threatening the police. The matter was brought up in the Chamber of Deputies on June 11, when M. Constans, the minister of the Interior, said that the government would deal severely with all who were responsible for similar disturbances. — **Important action against Boulanger** was taken on July 13, when the Chamber of Deputies passed a bill providing that no one should contest more than one seat at the same time. The bill was agreed to by the Senate two days later. The purpose of it was to prevent Boulanger from standing as a candidate in a large number of districts and virtually securing a plébiscite. — The formal indictment against Boulanger was delivered at his residence in Paris on July 16. He was charged with conspiring against the safety of the state, with embezzlement and with issuing manifestoes against the government. M. Rochefort and Count Dillon were indicted along with Boulanger. The three were summoned to appear for trial within ten days. — On August 19 Boulanger issued a manifesto in which he declared that the law against multiple candidacies was a blow at universal suffrage. Another manifesto signed by Boulanger, Rochefort and Dillon appeared on the 21st addressed to the French electors; in it the ministers were spoken of as miserable prevaricators, suborners of witnesses, malefactors, thieves and bandits. — Elections for members of the local councils-general were held throughout France on July 28. Boulanger proposed to test his strength with the people by standing as a candidate in 451 cantons. He expected to be successful in at least a hundred cantons, but was so in only twelve. — The **trial of Boulanger** was taken up by the high court of the Senate on August 8. On the 13th the members of the Right declined to take any further part in the proceedings. The court then discussed at length its competency to try the case, and decided by a vote of 201 to 7 that it was competent to try the accused on all the counts of the indictment. By 206 votes Boulanger was **declared guilty** of conspiracy; Rochefort and Dillon were pronounced guilty of complicity in the plot. Boulanger was also found guilty of a treasonable attempt against the state and of embezzling public funds. A manifesto followed from the accused men. They declared the action of the Senate court an orgy of arbitrary rule, calumny and audacity. Thereupon a decree was issued by the minister of the Interior forbidding the hawking or placarding of documents emanating from these three men. — Early in September Boulanger wrote to Prime-Minister Tirard demanding a trial by court-martial, and pledging himself to appear before such a tribunal. — The **elections** for members of the Chamber of Deputies took place on September 22. Boulanger had announced himself as a candidate in Montmartre in the department of the Seine, and on August 30 the Comte de Paris had issued an electoral manifesto in which he advised union of the Conservatives and tolerance of the Boulangists. The result of the elections was the overwhelming **defeat of the Boulangists** and the election of a substantial government majority in the Chamber. Boulanger received a majority of the votes cast in Montmartre, but on the ground that his candidacy had not been properly certified at the *mairie* the votes cast for him were declared null and void. Similar action was taken in the case of Rochefort, who was a candidate in

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Moribau. Reballots were taken on October 6 in a considerable number of districts in which the result was indecisive on September 22. Subsequently it was announced that the new Chamber of Deputies would consist of 366 Republicans and 210 members of the opposition. The opposition consists of 172 Royalists and Imperialists, and 38 Boulangists. — On October 7 General Boulanger left London for the isle of Jersey, and it was said that he would remain there throughout the winter. It was given out that he was preparing a book on European military science. Count Dillon arrived at Brussels on October 10. Afterward he went to Germany. On the 24th it was announced that he had been ordered to leave Germany on pain of arrest. About the middle of October an address was presented to Boulanger assuring him of the fidelity of the party to his cause and expressing confidence in his ultimate success. At this time it was said that the general would go to Brussels or Geneva and suddenly enter France and demand a new trial; but this was probably mere bluster. — A council of ministers was held on October 8, at which it was decided to convene the Chambers during the first week in November. The Conservative leaders announced that they would be in favor of supporting the moderates in establishing a strong and durable government, and would vote with them on all measures of reform compatible with monarchical principles. — The cabinet has expelled M. Laisant, the Boulangist deputy, from his place as an officer in the territorial army. — The centennial anniversary of the meeting of the States-General was observed on May 5 in Versailles. President Carnot delivered an address. As he was leaving the Elysée palace in Paris on his way to Versailles a man named Perrin fired a blank cartridge at him. Perrin had lately been under treatment for insanity. He was sentenced to four months' imprisonment. — The **universal exposition** in Paris in honor of the centennial of the revolution was formally opened by President Carnot on May 6. The exposition has been very successful. It was estimated on October 1 that 50,000 Americans had visited it. — The Chamber of Deputies adjourned on July 15. On that day it approved a bill providing for a credit of 58,000,000 francs, extending over five years, for the building of war-ships. The session of the Senate was closed before action was taken on this measure. — A council of war was held in Paris on October 14 and it was decided to double the sixth army corps, in order that 100,000 men might be sent quickly to the frontier in the case of an emergency. — General Louis L. C. Faidherbe, a distinguished officer, who had been engaged in the active service since 1844 and who was at the head of the army of the north in the Franco-German war, died in Paris on September 27. — Charles III, prince of Monaco, died on September 11, in his seventy-first year. He was an hereditary peer of France and a grandee of Spain of the first class.

GERMANY. — Affairs in Germany have been exceedingly quiet. The Emperor has been active in keeping his army up to a high standard and has travelled about his empire extensively, besides visiting Norway, England and Greece. — His visit to Athens was made in the latter part of October in order to attend the wedding of his sister and the Crown Prince of Greece. From Athens Emperor William set out on October 31 for Constantinople, to visit the Sultan of Turkey. — In a speech in response to a toast on May 19 he said

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that he hoped to lead the country in the way of peace, to which the policy of his grandfather pointed. — In October the government placed at the disposal of the Navy department the sum of 32,000,000 marks to be expended on new men-of-war. Of this amount 14,000,000 marks were on account of vessels in course of construction, being the second appropriation for that purpose; the remainder formed the first appropriation for the building of two iron-clads, three cruiser corvettes, one cruiser and three despatch boats. — The **Reichstag was opened** on October 22. The address from the throne directed attention to the importance of maintaining peace at home and abroad, and urged the development of the efficiency of the army so that it might be ready for action "in accordance with whatever circumstances may arise." The Emperor announced that a bill would be presented amending the military law of 1874 and providing for a fresh distribution of the army. The outlook for peace in Europe, it was stated, had been improved during the year, and this was attributed, in part at least, to the personal relations which the Emperor had cultivated with the rulers of friendly states. — The budget presented increased the army charges 146,000,000 marks, including 61,000,000 marks for the artillery. The naval estimates were increased 36,000,000 marks. The budget showed a total expenditure of 1,208,644,739 marks, including 849,614,835 marks of permanent and 81,349,597 marks of non-recurring expenditure in the ordinary estimates, and 277,700,307 marks in the extraordinary estimates.

RUSSIA. — Count Dmitri Andreevitch Tolstoï, the Russian minister of the Interior for a number of years, died on May 7. He was a relative of the Count Tolstoï, the novelist and reformer, but entertained none of the latter's liberal ideas. He sympathized with the aims of autocratic despotism and did what he could to crush out the liberal movement in Russia. — About the middle of May it was made known that a widespread plot against the Czar had been discovered, and that officers of regiments stationed in Moscow and Warsaw were involved in it. Three of the accused officers committed suicide. — The official report of the revenue of the empire for the first six months of the year showed it to be 422,000,000 rubles, against 374,000,000 rubles for the same period in the previous year. The expenditures amounted to 415,000,000 rubles, against 420,000,000 rubles in 1888. — It was announced in October that a convention had been signed by a representative of Russia and Count Rampolla, the papal secretary of State, in accordance with which the Propaganda would appoint five Russian bishops. — The Czar made a visit to Berlin on October 11. On his journey and while in the German capital he was closely guarded by police and military. He was cordially greeted by Emperor William, and while in Berlin held an interview with Prince Bismarck.

ITALY. — King Humbert, the Crown Prince of Italy and Signor Crispi, the prime minister, visited Berlin on May 21 and returned to Rome on June 1. — In the Chamber of Deputies on June 17 a vote of confidence in the government was carried by a large majority. — Benedetto Cairoli, formerly prime minister, died on August 8, aged 63. At the time of his death he was one of the leaders of the Extreme Left in the Chamber of Deputies, but had ceased to take an active part in politics. — In October the Italian government declared a protectorate over Abyssinia. — At a banquet given in his honor on

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October 14 Prime-Minister Crispi spoke of the necessity of combating all persons, high or low, who were seeking to undermine the government. In connection with this he alluded to the temporal power of the Pope and asserted that the Pope possessed perfect religious liberty, being only restricted (and less harshly than in other Catholic states) from encroaching on the sphere of national right.

AUSTRIA-HUNGARY. — Emperor Francis Joseph, in receiving the Delegations on June 23, said that Austria's foreign relations and general foreign policy were unchanged and that the empire was in full agreement with its allies. The government, he said, was doing its utmost to insure the peaceful development of the European situation, which was still doubtful. Though armaments were being increased everywhere, he hoped that peace would be maintained. It was the increase of armaments that compelled Austria not to halt in the work of completing the means of defence. — In the Delegations on June 25 Count Kálnoky, the minister of Foreign Affairs, expressed the belief that the peace of Europe was not immediately threatened, though the situation was unsettled. — The Emperor and Count Kálnoky visited Berlin about the middle of August. — Herr Tisza, the Hungarian premier, in a speech on October 2 said that, while circumstances would not permit any abatement of the preparations for defence, he hoped with confidence that peace would be preserved. — The budget for 1890 was presented in the Hungarian Diet on October 15. The estimated expenditures were 355,663,646 florins and the estimated receipts 355,259,247 florins, leaving a deficiency of 404,399 florins. — Some excitement was created by an insult to the Austrian flag at Monor, Hungary, in September. When the Emperor went there to superintend the military manœuvres, the Austrian imperial flag was ordered to be placed over his headquarters. There was some murmuring on this account and in the night the flag was torn down and thrown into a ditch. The Emperor was deeply offended and said that he hoped the author of the shameful outrage would be detected and punished. The matter came up in the lower house of the Hungarian Diet on October 26, when the leader of the Extreme Left moved that impeachment proceedings be instituted against Baron Fejervary, the minister of National Defence, on account of his unsatisfactory reply to the interpellation regarding the treatment to which the flag had been subjected.— A flurry was created in October by the proposal of the new governor of Bohemia, Count Thun-Hohenstein, to re-establish the ancient kingdom of Bohemia and have the Emperor of Austria crowned as king of Bohemia at Prague. This was in line with the policy of the Czech party, on which the German element in the empire looks with distrust.

SPAIN. — A crisis occurred in the Spanish ministry in the latter part of May and Prime-Minister Sagasta narrowly escaped the necessity of resigning. Opposition to him broke out in his own party, or, rather, the fusion of parties owning his leadership. The immediate cause of the rupture was the defeat of the proposition to increase the duty on cereals. At the time of the voting a great disturbance took place in the Chamber, the president, Martos, leaving his chair to vote against his party. The disaffected Liberals then proposed to join the Conservatives in demanding a vote on the government bill to grant universal suffrage before discussing the estimates, hoping on that issue to

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overthrow Sagasta. The premier took the heroic measure of securing the Queen-Regent's assent to a decree suspending the sessions of the Cortes, and thus staved off the necessity of resigning. — In the Chamber of Deputies on June 17 Becerra, minister of the Colonies, presented the Cuban budget. The revenues and expenditures balanced at $2,000,000. The minister asked authority to issue a Spanish guaranteed loan of $175,000,000 to convert the Cuban debts. — On June 21 Becerra affirmed that the United States had made no proposition relative to the purchase of Cuba, and asserted that no proposal for the sale of the island would be entertained by the Spanish government. — There was a slight menace of war between Spain and Morocco in September, growing out of the capture of a Spanish vessel on the Morocco coast and the imprisoning of the captain, four of the crew and a passenger. The Spanish government made a demand for the release of the prisoners and ordered a fleet of war-ships to proceed at once to Tangier. The Sultan of Morocco promptly yielded to the demands of Spain. — The budget was presented in the Cortes on October 31. The revenue was stated to be 803,000,000 pesetas, slightly exceeding the expenditures.

MINOR EUROPEAN STATES. — Luis I, King of **Portugal**, died on October 19. He was fifty-one years of age and had been in poor health for some time. He ascended the throne November 11, 1861. His eldest son, the Duke of Braganza, succeeded to the throne with the title of Carlos I. The elections for members of the Chamber of Deputies took place on the day after the King's death and resulted in the return of 102 supporters of the government and 38 members of the opposition. — Alexander, the young king of **Servia**, was anointed on July 2. Ex-Queen Natalie arrived in Belgrade on September 29 and was received by the people with the utmost enthusiasm. She declared her intention to keep aloof from politics and party intrigues. The elections for the Skuptschina took place toward the end of September and resulted in the choice of 102 Radicals and 15 Liberals. The Skuptschina was opened on October 20, when a message from the Regents was read declaring that Servia's relations with all foreign powers were friendly. The overwhelming Radical victory is expected to involve the overthrow of the Obrenovitch dynasty and the restoration of the Karageorgevitch dynasty to the Servian throne. — The second anniversary of the ascension of the throne of **Bulgaria** by Prince Ferdinand was observed on August 14. The Prince was everywhere received with pronounced enthusiasm and in a speech congratulated Bulgaria upon her moral and material progress. In October Prince Ferdinand visited Munich, Geneva, Paris, London and other cities. On October 16 it was announced that an Austrian bank in conjunction with German banks had loaned the Bulgarian government 25,000,000 francs. — Owing to the improvement in the health of the King of the **Netherlands**, who had previously been thought incapacitated for carrying on the government, Parliament on May 2 passed by a unanimous vote a resolution restoring his power. Parliament reopened on September 17. The King's speech said that the finances were in a satisfactory condition and announced that bills would be introduced for the establishment of obligatory military service and for a reorganization of the postal and railway services. The budget showed that the estimated revenues and expenditures were equal, but in the Dutch East Indies' budget there was an estimated

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deficiency of 12,400,000 florins. — A vote of censure against the ministry of **Belgium** was rejected in the Chamber of Deputies on May 29, and confidence in the government was voted — 78 to 32. — The **Norwegian** ministry, led by Sverdrup, resigned on July 2 in consequence of a threatened vote of censure, and Stang, the leader of the Right, was summoned to form another ministry. His cabinet is not expected to have a long lease of life. — A reorganization of the **Swedish** cabinet took place in October, when Count Carl Lowenhaupt, who was the Swedish minister to the United States from 1876 to 1883, was made minister of Foreign Affairs, and M. Akerheilm became premier. — The **Danish** Rigsdag opened on October 7. M. Liebe was re-elected president of the Landsthing and M. Hogsbroe president of the Folksthing. The budget showed revenues amounting to $14,740,000 and expenditures of $15,816,000. — Prince Denilo, son of the reigning prince, was proclaimed heir-apparent to the throne of **Montenegro** in June. — The marriage of the Duke of Sparta, Crown Prince of **Greece**, and Princess Sophie, sister of the Emperor of Germany, took place at Athens on October 27. — There have been serious internal troubles in Crete, mainly growing out of a quarrel between the Liberal and Conservative parties. The last elections returned a sweeping Liberal majority, but the Conservatives were unwilling to relinquish their hold upon the offices. This led to a bloody outbreak. At the end of July the ministerial council at Constantinople decided to send a commission to Crete to settle the difficulties. At that time Sartinsky, the governor, was recalled and Chakir Pacha was appointed in his place. Martial law was proclaimed in the island in August. Later reports said that the Turkish soldiers had been allowed to pillage and persecute the Christians.

MEXICO. — The Mexican Congress was opened on September 16. In his message President Diaz made a good financial showing, pointing out that in the last fiscal year the receipts showed an increase of more than $500,000 over the previous year. He also said that the loan negotiated in Berlin had been successful and that Mexican stocks were sure of a good standing in the foreign markets. — News was received on June 6 of the ratification by both governments of a new treaty between Mexico and Japan. This is the first treaty in which a western government fully recognizes the autonomy of Japan. By it Mexican citizens in Japan are made subject to the Japanese laws and judicial tribunals, and Mexico obtains free ingress for all her citizens in all parts of Japan, with the privileges of trade and residence throughout the country.

THE PANAMA CANAL. — Comparatively nothing has been done to rehabilitate the Panama-Canal project. A relief bill was passed by the French National Assembly in July. The bill empowered the liquidator of the company to place, on the best conditions possible and regardless of the legal limit as to price, the 800,000 francs of bonds that had not been subscribed for. It also authorized the expenditure of 34,000,000 francs to cover the expenses necessary for the maintenance of the works pending an inquiry into the question of the completion of the canal. In the latter part of July the civil tribunal in Paris decided that the Panama-Canal company could not compel the holders of lottery bonds to pay the outstanding instalments, but that the holders of such bonds were still liable to be called upon to make *pro-rata*

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payments to the extent of a quarter of the nominal value of the bonds. On August 17 it was announced that the formation of a technical commission to examine the works was about completed. Reports from the Isthmus indicate that all is quiet there, work on the canal having been entirely suspended.

THE NICARAGUA CANAL. — A number of men and a considerable quantity of material for the Nicaragua-Canal Construction company left New York on May 25 and the work upon the canal has since been in progress. Some difficulties in reference to the matter arose between Nicaragua and Costa Rica, but on October 9 a despatch was received stating that they had been settled by United States Minister Mizner. The formal breaking of ground for the canal took place October 22. The health of the men employed upon the work is said to be remarkably good.

AFRICA. — Reports from Zanzibar on the 11th and 12th of September stated that **Henry M. Stanley** was marching toward Mombasa after fighting his way through the hostile country of Unyoro and Uganda, and that after leaving the basin of the Albert Nyanza he endeavored to make his way southward by passing to the west of the Victoria Nyanza, but, failing in this, went northward and reached the eastern shore of the lake, Emin Pacha accompanying him. What is regarded as more trustworthy news came on October 23 in the shape of a despatch from Captain Wissmann saying that Stanley, with Emin, Casati and six Englishmen, was expected to arrive at Mpwapwa in the latter part of November. Mpwapwa is a mission station 150 miles inland on the direct route between Zanzibar and Lake Tanganyika. Hence the expedition may be expected to arrive at Zanzibar toward the end of December. — On June 26 the Portuguese government cancelled the concession which it had granted for the building of a railroad at Delagoa Bay. The concession had been given to an English company and the action of Portugal was regarded as a piece of gross bad faith. The railroad was designed to furnish an outlet for the trade of the interior provinces of South Africa. English gunboats were ordered to Delagoa Bay, the matter was discussed in Parliament, and Portugal was informed that it would be held responsible for all the losses incurred by Englishmen in consequence of its action. Subsequently the Portuguese government decided to complete the railway. — There has been a continuance of the troubles with the dervishes on the upper Nile. An engagement between them and a body of Egyptian troops under Colonel Wodehouse took place early in June; the dervishes were defeated with a reported loss of 500 killed and the same number captured. General Grenfell had a decisive battle with the dervishes on August 3, defeating them with a loss of 1500, including their leader, Wad-el-N'jumi. The dervishes fought with great desperation, making repeated charges on the British and Egyptian lines. The Egyptian loss was 17 killed and 131 wounded; 1000 dervishes were made prisoners. — It was announced on September 1 that the Sultan of Zanzibar had signed a concession giving to the British East Africa company the Lamu island and the Benagir coast from Kipini northward. — The slave blockade on the east coast of Africa was raised on October 1. It had been maintained for ten months by British and German men-of-war. — A decree was issued by the governor of Tripoli in July abolishing the slave-trade and forbidding any one to engage in it under pain of severe penalties. — The

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